

**Maine Revised Statutes**  
**Title 9-B: FINANCIAL INSTITUTIONS**

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## **Title 9-B: FINANCIAL INSTITUTIONS**

### **Part 1: GENERAL PROVISIONS**

#### **Chapter 11: POLICY**

##### **§111. DECLARATION OF POLICY**

By enactment of this Title, it is declared to be the policy of the State that the business of all financial institutions must be supervised by the Bureau of Financial Institutions in a manner to ensure the strength, stability and efficiency of all financial institutions; to ensure reasonable and orderly competition, thereby encouraging the development and expansion of financial services advantageous to the public welfare; and to maintain close cooperation with other supervisory authorities. [2001, c. 44, §2 (AMD); 2001, c. 44, §14 (AFF).]

In addition, with respect to the Bureau of Financial Institutions' authority pursuant to Title 9-A, section 1-301, subsection 2, all financial institutions must be supervised in such a way as to protect consumers against unfair practices by financial institutions that provide consumer credit, to provide consumer education and to encourage the development of economically sound credit practices. [2001, c. 44, §2 (AMD); 2001, c. 44, §14 (AFF).]

##### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1995, c. 309, §14 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §2 (AMD). 2001, c. 44, §14 (AFF).

##### **§112. SEVERABILITY**

If any provision of this Title or the application of this Title to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Title that can be given effect without the invalid provision or application, and to this end the provisions of this Title are severable. [1991, c. 2, §22 (COR).]

##### **SECTION HISTORY**

1975, c. 500, §1 (NEW). RR 1991, c. 2, §22 (COR).

#### **Chapter 12: ADMINISTRATION**

##### **§121. BUREAU OF FINANCIAL INSTITUTIONS**

There is created under this Title a Bureau of Financial Institutions, which has the responsibility of administering the provisions of this Title. In addition, in cases in which a financial institution is the creditor, the Bureau of Financial Institutions has the responsibility of administering the provisions of the Maine Consumer Credit Code pursuant to Title 9-A, section 1-301, subsection 2. [2001, c. 44, §3 (AMD); 2001, c. 44, §14 (AFF).]

##### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1995, c. 309, §15 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §3 (AMD). 2001, c. 44, §14 (AFF).

#### **Chapter 13: DEFINITIONS**

## §131. DEFINITIONS

In addition to the definitions set forth elsewhere in this Title, and subject to such definitions as the superintendent may promulgate pursuant to regulations hereafter, for purposes of this Title, the following terms have the following meanings. [1979, c. 663, §27 (AMD).]

**1. Agency.** "Agency" means a branch office of a financial institution at which all or part of the business of the institution is conducted, but the records pertaining to such business are maintained at another office of the institution, and not at such agency office.

[ 1975, c. 666, §1 (AMD) .]

**1-A. Affiliate.** "Affiliate" means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, "control" has the same meaning as in section 1011, subsection 4.

[ 1995, c. 628, §1 (NEW) .]

**2. Authorized to do business in this State.** "Authorized to do business in this State" means that a financial institution or credit union is authorized to do the business of banking, if it is:

A. Organized under provisions of this Title; [1975, c. 500, §1 (NEW) .]

B. Organized under provisions of prior laws of this State and subject to the provisions of this Title; [1995, c. 628, §2 (AMD) .]

C. Organized under provisions of federal law and maintains this State as its home state; [1995, c. 628, §2 (AMD) .]

D. Organized under provisions of federal law or laws of another state and maintains a branch in this State; or [1995, c. 628, §2 (NEW) .]

E. Organized under provisions of law of a foreign country and maintains a branch in this State. [1995, c. 628, §2 (NEW) .]

[ 1995, c. 628, §2 (AMD) .]

**3. Branch.** "Branch" means any office of a financial institution, including a credit union, where the business of banking is conducted other than the institution's main office. A branch includes an office or vehicle that is not permanent and that is capable of being moved or transferred from one location to another.

[ 2003, c. 322, §1 (AMD) .]

**4. Bureau.** "Bureau" means the Bureau of Financial Institutions.

[ 2001, c. 44, §4 (AMD); 2001, c. 44, §14 (AFF) .]

**5. Business of banking.** "Business of banking" or "business of financial institutions" means soliciting, receiving or accepting of money or its equivalent on deposit and the loaning of money as a regular business by any person.

[ 1975, c. 500, §1 (NEW) .]

**6. Capital.** "Capital" for a financial institution means the following:

A. For financial institutions organized as corporations, "capital" means the sum of common stock, paid-in common stock surplus, perpetual preferred stock, undivided profits and other capital reserves; [1997, c. 398, Pt. A, §2 (NEW) .]

B. For financial institutions organized as limited liability companies, limited partnerships or limited liability partnerships, "capital" means the sum of members' or partners' contributions and undistributed earnings of the company or partnership; and [1997, c. 398, Pt. A, §2 (NEW).]

C. For financial institutions organized as mutual or cooperative institutions, "capital" means the sum of capital deposits, surplus and undivided earnings. [1997, c. 398, Pt. A, §2 (NEW).]

[ 1997, c. 398, Pt. A, §2 (AMD) .]

**6-A. Closely related activities.** "Closely related activities" means those activities that are part of the business of banking, are closely related to the business of banking, are convenient and useful to the business of banking, are reasonably related to the operation of a financial institution or are financial in nature. Activities reasonably related to the operation of a financial institution include, but are not limited to, business and professional services, data processing, courier and messenger services, credit-related activities, consumer services, real estate-related services, insurance and related services, securities brokerage, investment advice, securities underwriting, mutual fund activities, financial consulting, tax planning and preparation, community development and charitable activities and any activities reasonably related to these activities. Any activity that is authorized by statute or regulation for financial institutions to engage in as of June 30, 1997 is a closely related activity and any activity permitted under the Bank Holding Company Act of 1956, 12 United States Code, Sections 1841 to 1850 (1997) or the Home Owners' Loan Act, 12 United States Code, Sections 1461 to 1470 (1997) or regulations promulgated under either Act is deemed to be a closely related activity. The list of closely related activities may be expanded by rule or by order of the superintendent.

[ 1997, c. 398, Pt. A, §3 (NEW) .]

**6-B. Commercial activity.** "Commercial activity" means any activity in which a bank holding company, a financial holding company, a national bank or a national bank financial subsidiary may not engage under federal law.

[ 2007, c. 69, §1 (NEW) .]

**7. Commercial bank.** "Commercial bank" means a trust and banking company organized under prior laws of this State or the laws of another country or state or a national bank.

[ 1997, c. 398, Pt. A, §4 (AMD) .]

**8. Commercial loan.** "Commercial loan" means a loan to a person, regardless of the nature of any property securing such loan, the proceeds of which are used for business or industrial purposes and not primarily for personal, family or household purposes.

[ 1975, c. 500, §1 (NEW) .]

**9. Commissioner.** "Commissioner" means the Commissioner of the Department of Professional and Financial Regulation.

[ 1993, c. 1, §24 (COR) .]

**9-A. Community development credit union.** "Community development credit union" means a credit union, as defined in subsection 12, of which a majority of the field of membership meets the definition of low-income in subsection 24-A.

[ 1997, c. 108, §1 (NEW) .]

**10. Consumer loan.** "Consumer loan" means a loan defined as such pursuant to Title 9-A, section 1-301, subsection 14.

[ 1975, c. 500, §1 (NEW) .]

**10-A. Cooperative financial institution.** "Cooperative financial institution" means any financial institution organized pursuant to chapter 32 in which the earnings and net worth of the institution inure to the ultimate benefit of the members.

[ 1997, c. 398, Pt. A, §5 (NEW) .]

**11. Credit card.** "Credit card" means a credit device by which a cardholder obtains loans or otherwise obtains credit from the card issuer or other persons authorized to extend such credit by the card issuer or his agent.

[ 1975, c. 500, §1 (NEW) .]

**12. Credit union.** "Credit union" means a cooperative, nonprofit corporation organized pursuant to Part 8, or under corresponding provisions of any earlier law, and subject to the conditions and limitations as shall be set forth in Part 8.

[ 1975, c. 500, §1 (NEW) .]

**12-A. Credit union authorized to do business in this State.** "Credit union authorized to do business in this State" means a credit union:

A. Organized under provisions of this Title; [1975, c. 666, §2 (NEW) .]

B. Organized under provisions of prior laws of this State and subject to the provisions of this Title; [1995, c. 628, §3 (AMD) .]

C. Organized under provisions of federal law and maintains this State as its home state; [1995, c. 628, §3 (AMD) .]

D. Organized under provisions of federal law or laws of another state and maintains a branch in this State; or [1995, c. 628, §4 (NEW) .]

E. Organized under provisions of law of a foreign country and maintains a branch in this State. [1995, c. 628, §4 (NEW) .]

[ 1995, c. 628, §§3, 4 (AMD) .]

**12-B. Deposit production offices.** "Deposit production offices" means the Maine offices operated by an individual financial institution authorized to do business in this State or individual credit union authorized to do business in this State that do not reasonably help meet the credit needs of Maine communities. For purposes of this subsection, "deposits" includes credit union share accounts.

[ 2005, c. 83, §1 (RPR) .]

**13. Director.** "Director" means a member of the governing body of a financial institution.

[ 1997, c. 398, Pt. A, §6 (AMD) .]

**14. Electronic funds transfer system.** "Electronic funds transfer system" (EFTS) means a computer payment system for transferring funds from one party to another.

[ 1975, c. 500, §1 (NEW) .]



**14-A. Equity interest.** "Equity interest" means common stock, preferred stock, members' or partners' interests or any other type of capital instrument that entitles the holder to vote pursuant to the financial institution's organizational documents.

[ 1997, c. 398, Pt. A, §7 (NEW) . ]

**15. Federal association.** "Federal association" means a savings and loan association, savings bank or other financial institution organized pursuant to the Act of Congress entitled "Home Owners' Loan Act of 1933", as amended, or any subsequent Act of Congress relating thereto.

[ 1983, c. 600, §1 (AMD) . ]

**15-A. FDIC.** "FDIC" means the Federal Deposit Insurance Corporation or its successors.

[ 1997, c. 398, Pt. A, §7 (NEW) . ]

**16. Federally-chartered credit union.** "Federally-chartered credit union" means a credit union organized pursuant to the Act of Congress entitled "Federal Credit Union Act", as amended, or any subsequent Act of Congress relating thereto.

[ 1975, c. 500, §1 (NEW) . ]

**17. Financial institution.** "Financial institution" means a universal bank or limited purpose bank organized under the provisions of this Title, and a trust company, nondepository trust company, savings bank, industrial bank or savings and loan association organized under the prior laws of this State. When the term "financial institution" is used in Parts 1 and 2 and sections 422-A, 427, 428, 429 and chapter 46, the term also includes a credit union organized pursuant to the laws of this State.

[ 2003, c. 322, §2 (AMD) . ]

**17-A. Financial institution authorized to do business in this State.** "Financial institution authorized to do business in this State" means a:

A. Universal bank or limited purpose bank organized under provisions of this Title; [ 1997, c. 398, Pt. A, §9 (AMD) . ]

B. Trust company, savings bank, savings and loan association or industrial bank organized under provisions of prior laws of this State and subject to the provisions of this Title; [ 1997, c. 398, Pt. A, §9 (AMD) . ]

C. National bank, federal association or similar institution that is organized under provisions of federal law and maintains this State as its home state; [ 1997, c. 398, Pt. A, §9 (AMD) . ]

D. Commercial bank, savings bank, savings and loan association or similar institution that is organized under provisions of federal law or laws of another state and maintains a branch in this State; or [ 1997, c. 398, Pt. A, §9 (AMD) . ]

E. Commercial bank, savings bank, savings and loan association or similar institution that is organized under provisions of law of a foreign country and maintains a branch in this State. [ 1997, c. 398, Pt. A, §9 (AMD) . ]

[ 1997, c. 398, Pt. A, §9 (AMD) . ]

**18. Financial institution holding company.** "Financial institution holding company" means any company which is deemed to be a holding company pursuant to the provisions contained in chapter 101.

[ 1975, c. 500, §1 (NEW) . ]

**18-A. Financial institutions not authorized to do business in this State.** "Financial institutions not authorized to do business in this State" means any person engaged in the business of banking that does not satisfy the definition of "authorized to do business in this State" found in subsection 2.

[ 1987, c. 692, §1 (NEW) .]

**18-B. Governing body.** "Governing body" means the body that oversees the affairs of a financial institution. The governing body may also be referred to as the "board of directors," "board of trustees," "board of managers," "partners' committee" or "managing partners' committee," depending upon the ownership structure of the financial institution.

[ 1997, c. 398, Pt. A, §10 (NEW) .]

**19. Demand deposit.**

[ 1997, c. 398, Pt. A, §11 (RP) .]

**19-A. Foreign bank.** "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands that engages directly in the banking business. "Foreign bank" includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in usual banking activities in connection with the banking business in the countries where the foreign institutions are organized or operating.

[ 1997, c. 182, Pt. A, §1 (NEW) .]

**20. His.** "His," as used in this Title, means "his or her;" while "he" means "he or she."

[ 1979, c. 663, §28 (AMD) .]

**20-A. Home state.** "Home state" means:

A. With respect to a financial institution or out-of-state financial institution, the state under whose laws the financial institution or out-of-state financial institution is organized; [1997, c. 182, Pt. B, §1 (AMD) .]

B. With respect to a national bank or federal association, the state in which the main office of the national bank or federal association is deemed to be located under federal law; or [1997, c. 182, Pt. B, §1 (AMD) .]

C. With respect to a foreign bank, the state that the foreign bank has designated as its home state in accordance with Section 5 of the federal International Banking Act of 1978. [1997, c. 182, Pt. B, §2 (NEW) .]

[ 1997, c. 182, Pt. B, §§1, 2 (AMD) .]

**20-B. Host state.** "Host state" means a state, other than the home state of an out-of-state financial institution, national bank or federal association, in which the financial institution maintains a branch or seeks to establish and maintain a branch.

[ 1995, c. 628, §8 (NEW) .]

**21. Indirect loan.** "Indirect loan" means a loan made to an individual, partnership, joint venture, syndicate or corporation which is an agent of another individual, partnership, joint venture, syndicate or corporation, the proceeds of which are used by the party for which the borrower is an agent.

[ 1975, c. 500, §1 (NEW) .]

**22. Industrial bank.** "Industrial bank" means a company organized under chapter 91 or having the powers possessed by companies so organized.

[ 1975, c. 500, §1 (NEW) . ]

**22-A. In-school branch.**

[ 1997, c. 398, Pt. A, §12 (RP) . ]

**22-B. Insurance agent or agency.** "Insurance agent or agency" means a person engaged in the business of an insurance agent as defined in Title 24-A, section 1502.

[ 1997, c. 315, §9 (NEW) . ]

**22-C. Insurance broker.** "Insurance broker" means a person engaged in the business of an insurance broker as defined in Title 24-A, section 1506.

[ 1997, c. 315, §9 (NEW) . ]

**22-D. Insurance consultant.** "Insurance consultant" means a person engaged in the business of an insurance consultant as defined in Title 24-A, section 1402, subsection 4, 8 or 11.

[ 1999, c. 127, Pt. A, §20 (AMD) . ]

**22-E. Insurance product.** "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker.

[ 1997, c. 315, §9 (NEW) . ]

**23. Interested party.** "Interested party" means a person having a substantial interest in, or who is or may be aggrieved by, any act or impending act, or any report, rule, regulation, amendment, decision or order of the superintendent.

[ 1975, c. 500, §1 (NEW) . ]

**23-A. Investor.** "Investor" means any person who has an ownership interest in a financial institution and is entitled to vote under the institution's organizational documents. "Investor" does not include a member of a credit union organized pursuant to the laws of this State.

[ 2003, c. 322, §3 (AMD) . ]

**23-B. Investor-owned institution.** "Investor-owned institution" means a financial institution organized under chapter 31.

[ 1997, c. 398, Pt. A, §13 (NEW) . ]

**23-C. Limited purpose bank.** "Limited purpose bank" or "limited purpose institution" means an institution operating pursuant to Part 12.

[ 1997, c. 398, Pt. A, §13 (NEW) . ]

**24. Limited-time branch.**

[ 1997, c. 398, Pt. A, §14 (RP) . ]

**24-A. Low-income.** "Low-income" means earning less than 80% of the average income for all wage earners as established by the United States Department of Labor, Bureau of Labor Statistics or having an annual household income that falls at or below 80% of the median household income for the nation as established by the United States Department of Commerce, Bureau of the Census or as otherwise defined by order of the superintendent.

[ 1997, c. 108, §1 (NEW) .]

**25. Making a loan.** "Making a loan" means a loan made to a borrower by a single financial institution, or the purchase of a loan as authorized in section 431-A.

[ 1997, c. 398, Pt. L, §5 (AMD) .]

**26. Mobile branch.**

[ 1997, c. 398, Pt. A, §15 (RP) .]

**27. Mutual financial institution.** "Mutual financial institution" or "mutual institution" means any financial institution organized pursuant to chapter 32, in which the earnings and net worth of the institution inure to the ultimate benefit of the depositors or members.

[ 1997, c. 398, Pt. A, §16 (AMD) .]

**27-A. Mutual voter.** "Mutual voter" means a corporator or member as described in chapter 32.

[ 1997, c. 398, Pt. A, §17 (NEW) .]

**28. National bank.** "National bank" means a bank or bank and trust company organized pursuant to the Act of Congress entitled "The National Bank Act", as amended, or any subsequent Act of Congress relating thereto.

[ 1975, c. 500, §1 (NEW) .]

**28-A. Nondepository trust company.** "Nondepository trust company" means any financial institution organized under chapter 121 with powers generally limited to trust or fiduciary matters.

[ 1997, c. 398, Pt. A, §18 (AMD) .]

**29. NOW account.**

[ 1997, c. 398, Pt. A, §19 (RP) .]

**29-A. Out-of-state.** "Out-of-state" means a foreign country or a state other than this State.

[ 1995, c. 628, §8 (NEW) .]

**29-B. Out-of-state financial institution.** "Out-of-state financial institution" means a financial institution organized under provisions of law of a foreign country or a state other than this State that maintains, or seeks to establish and maintain, a branch in this State.

[ 1995, c. 628, §8 (NEW) .]

**29-C. Officer.** "Officer" means an employee of a financial institution who has been given managerial or other high-level duties by the governing body of the financial institution. Depending upon the ownership structure of the institution, an officer may include a person with the title of chair, president, vice-president, manager, managing partner or partner.

[ 1997, c. 398, Pt. A, §20 (NEW) . ]

**29-D. Organizational document.** "Organizational document" means the charter, certificate of organization, articles of incorporation, articles of association, articles of organization, certificate of limited liability partnership, bylaws, operating agreement, partnership agreement or any other similar document required to be filed with and approved by the superintendent pursuant to section 314-A or 323.

[ 1997, c. 398, Pt. A, §20 (NEW) . ]

**30. Person.** "Person" means an individual, corporation, partnership, joint venture, trust, estate or unincorporated association.

[ 1975, c. 500, §1 (NEW) . ]

### **31. Personal demand deposit.**

[ 1997, c. 398, Pt. A, §21 (RP) . ]

**31-A. Real estate-related services.** "Real estate-related services" means:

A. Real estate investment and development, pursuant to section 419-A; [1997, c. 398, Pt. A, §22 (NEW) . ]

B. Maintenance and management of improved real estate; [1997, c. 398, Pt. A, §22 (NEW) . ]

C. Real estate appraising; [1997, c. 398, Pt. A, §22 (NEW) . ]

D. Real estate settlement services; [1997, c. 398, Pt. A, §22 (NEW) . ]

E. Real estate brokerage activities with respect to properties owned by a financial institution authorized to do business in this State, a financial institution holding company, or subsidiaries thereof, regardless of how the property is acquired or for what purpose; or [1997, c. 398, Pt. A, §22 (NEW) . ]

F. Any real estate-related service authorized by this Title or by rule or order of the superintendent or any real estate-related service authorized for any financial institution chartered by or otherwise subject to the jurisdiction of the Federal Government, pursuant to the authority granted under section 416. [1997, c. 398, Pt. A, §22 (NEW) . ]

[ 1997, c. 398, Pt. A, §22 (NEW) . ]

**32. Savings account.** "Savings account" or "savings deposit" means a deposit or account in a financial institution in which the depositor is not required by the deposit contract, but may at any time be required by the financial institution, to give notice in writing of an intended withdrawal not less than 7 days before such withdrawal is made and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.

[ 2005, c. 82, §1 (AMD) . ]

**33. Savings and loan association.** "Savings and loan association," "association" or "loan and building association" means a financial institution organized under the prior laws of this State that is authorized to exercise the powers set forth in Part 4, subject to the conditions and limitations on the exercise of those powers as set forth in Part 4.

[ 1997, c. 398, Pt. A, §23 (AMD) .]

**34. Savings bank.** "Savings bank" or "institute for savings" means a financial institution organized under the prior laws of this State that is authorized to exercise the powers set forth in Part 4, subject to the conditions and limitations on the exercise of those powers as set forth in Part 4.

[ 1997, c. 398, Pt. A, §23 (AMD) .]

**35. Satellite facility.** "Satellite facility" means any facility, automated device or electronic terminal established by a financial institution authorized to do business in this State or a credit union authorized to do business in this State at which an existing financial institution or credit union customer may initiate banking transactions, including, but not limited to, cash deposits to and withdrawals from that customer's account, cash advances on a preauthorized credit line, transfers between deposit or share accounts or payment transfers from the customer's account to accounts of other financial institution or credit union customers. Such a facility is not permanently staffed and is not part of a main office or branch office of a financial institution or credit union. Such a facility may be part of an electronic funds transfer system. Satellite facilities include facilities engaged in soliciting, receiving or accepting money or its equivalent on deposit from new and existing customers. "Satellite facility" does not include a cash dispensing machine that, operating in conjunction with a processor and network, allows a customer to debit an account in exchange for dispensing cash and that may allow a customer to effectuate transfers between the customer's accounts in the same financial institution or credit union, a point-of-sale terminal, a night depository or an office or facility engaged solely in the solicitation and origination of loans.

[ 2003, c. 322, §4 (AMD) .]

**36. Seasonal branch.**

[ 1997, c. 398, Pt. A, §25 (RP) .]

**37. Service corporation.** "Service corporation" means a corporation, limited liability company or limited partnership substantially all the activities of which consist of originating, purchasing, selling and servicing loans and participation interests therein; or clerical, bookkeeping, accounting and statistical or similar functions related to a financial institution or real estate activities; or management, personnel, marketing or investment counseling related to a financial institution or real estate activities; or establishing or operating one or more satellite facilities; or any activity authorized by the superintendent by rule or order that has been authorized under federal law for service corporations owned or controlled by national banks, federally chartered savings and loan associations, federally chartered savings banks or federally chartered credit unions. The purpose of authorizing any such activity is to maintain competitive equality between federally chartered and state-chartered institutions.

[ 2005, c. 82, §2 (AMD) .]

**37-A. Share account.** "Share account" means a share or deposit account at a credit union held by or offered to a member or potential member. "Share account" includes, but is not limited to, accounts such as share, share draft and term share accounts. "Share account" also includes a share or deposit account held by or offered to a nonmember in a community development credit union.

[ 2003, c. 322, §5 (NEW) .]

**38. Sociological composition.** "Sociological composition" means the reflection of broad social and economic characteristics of the communities in which a mutual financial institution derives a substantial part of its deposit and loan business.

[ 1975, c. 500, §1 (NEW) .]

**39. Stock financial institution.**

[ 1997, c. 398, Pt. A, §27 (RP) .]

**39-A. Subsidiary.** "Subsidiary" means a corporation, partnership, business trust, association or similar organization, all of which are referred to in this subsection as "another company," owned or controlled by a financial institution or financial institution holding company. A financial institution or financial institution holding company shall be deemed to control "another company" if the criteria set forth in section 1011, subsection 4, are met.

[ 1985, c. 328, §1 (NEW) .]

**40. Superintendent.** "Superintendent" means the Superintendent of Financial Institutions.

[ 2001, c. 44, §5 (AMD); 2001, c. 44, §14 (AFF) .]

**41. Surplus account.** "Surplus account" or "total surplus" for a mutual financial institution means the sum of its capital reserves, surplus funds, undivided profits, and capital notes and debentures.

[ 1975, c. 500, §1 (NEW) .]

**42. Thrift institution.** "Thrift institution" means a savings bank or a savings and loan association organized under the prior laws of this State.

[ 1997, c. 398, Pt. A, §28 (AMD) .]

**43. Time deposit.** "Time deposit" means "time certificate of deposit" and "time deposit, open account".

[ 1975, c. 500, §1 (NEW) .]

**44. Time certificate of deposit.** "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

A. On a certain date, specified in the instrument, not less than 30 days after the date of the deposit; or  
[1975, c. 500, §1 (NEW).]

B. At the expiration of a certain specified time not less than 30 days after the date of the instrument; or  
[1975, c. 500, §1 (NEW).]

C. Upon notice in writing which is actually required to be given not less than 30 days before the date of repayment; and [1975, c. 500, §1 (NEW).]

D. In all cases only upon presentation and surrender of the instrument. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**45. Time deposit, open account.** "Time deposit, open account" means a deposit other than a "time certificate of deposit", with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 30 days after the date of the deposit; or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 30 days in advance of withdrawal.

[ 1975, c. 500, §1 (NEW) .]

**45-A. Total capital.** "Total capital" means the sum of capital, as defined in subsection 6, plus capital notes and debentures, other instruments approved by the superintendent and the allowance for loan losses or other similar reserves.

[ 1997, c. 398, Pt. A, §29 (NEW) .]

**46. Trust company.** "Trust company" or "trust and banking company" means any financial institution organized under the prior laws of this State that is authorized to exercise the powers set forth in Part 4, subject to the conditions and limitations on the exercise of those powers as set forth in Part 4.

[ 1997, c. 398, Pt. A, §30 (AMD) .]

**47. Universal bank.** "Universal bank" means an investor-owned institution or a mutual financial institution authorized by its organizational documents to exercise all the powers granted in Part 4 and includes a trust company, a savings bank and a savings and loan association chartered by special act of the Legislature, established prior to October 1, 1975 or established pursuant to this Title.

[ 1997, c. 2, §34 (COR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§1-4 (AMD). 1979, c. 663, §§27,28 (AMD). 1981, c. 352, §1 (AMD). 1981, c. 646, §1 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 600, §1 (AMD). 1985, c. 328, §1 (AMD). 1987, c. 692, §§1,2 (AMD). 1991, c. 670, §§1,2 (AMD). RR 1993, c. 1, §24 (COR). 1993, c. 99, §1 (AMD). 1993, c. 492, §§1,2 (AMD). 1995, c. 628, §§1-8 (AMD). RR 1997, c. 2, §34 (COR). 1997, c. 22, §1 (AMD). 1997, c. 108, §1 (AMD). 1997, c. 182, §§A1,B1,2 (AMD). 1997, c. 315, §9 (AMD). 1997, c. 398, §§A1-31,L5 (AMD). 1999, c. 127, §A20 (AMD). 1999, c. 229, §1 (AMD). 2001, c. 44, §§4,5 (AMD). 2001, c. 44, §14 (AFF). 2003, c. 322, §§1-5 (AMD). 2005, c. 82, §§1,2 (AMD). 2005, c. 83, §1 (AMD). 2007, c. 69, §1 (AMD).

## Chapter 14: HOLIDAYS

### §141. FINANCIAL INSTITUTION HOLIDAYS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 623, §§6-A (AMD). 1985, c. 114, §2 (AMD). 1985, c. 787, §3 (AMD). 1995, c. 24, §§1,2 (AMD). 1997, c. 398, §B1 (RP).

### §142. SATURDAY HOURS

*(REPEALED)*



## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §B1 (RP).

### **§143. ACTS PERFORMED AFTER NOON SATURDAY (REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §B1 (RP).

### **§144. SATELLITE FACILITIES; HOURS OF OPERATION (REPEALED)**

## SECTION HISTORY

1981, c. 352, §2 (NEW). 1997, c. 398, §B1 (RP).

## **Chapter 14-A: BUSINESS DAYS AND HOURS OF OPERATION**

### **§145. BUSINESS DAYS; BANKING DAYS; HOURS OF OPERATION**

**1. Business days.** For purposes of this Title, unless otherwise provided under other state or federal law applicable to financial institutions, a business day is a calendar day other than the following:

- A. Saturday and Sunday; [1997, c. 398, Pt. B, §2 (NEW).]
- B. January 1st, New Year's Day; [1997, c. 398, Pt. B, §2 (NEW).]
- C. The 3rd Monday in January, Martin Luther King, Jr. Day; [1997, c. 398, Pt. B, §2 (NEW).]
- D. The 3rd Monday in February, President's Day; [1997, c. 398, Pt. B, §2 (NEW).]
- E. The 3rd Monday in April, Patriot's Day; [1997, c. 398, Pt. B, §2 (NEW).]
- F. The last Monday in May, Memorial Day, but if the United States Government designates May 30th as the date of observance of Memorial Day, then May 30th; [1997, c. 398, Pt. B, §2 (NEW).]
- G. July 4th, Independence Day; [1997, c. 398, Pt. B, §2 (NEW).]
- H. The first Monday of September, Labor Day; [1997, c. 398, Pt. B, §2 (NEW).]
- I. The 2nd Monday in October, Columbus Day; [1997, c. 398, Pt. B, §2 (NEW).]
- J. November 11th, Veterans' Day; [1997, c. 398, Pt. B, §2 (NEW).]
- K. The 4th Thursday in November, Thanksgiving Day; and [1997, c. 398, Pt. B, §2 (NEW).]
- L. December 25th, Christmas Day. [1997, c. 398, Pt. B, §2 (NEW).]

If January 1st, July 4th, November 11th or December 25th falls on a Sunday, then the next Monday is not a business day.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

**2. Days and hours of banking offices.** A financial institution may, at its discretion, establish days and hours for its offices, including opening offices for business on days that are not defined as business days in subsection 1. The days and hours of operation must be established in accordance with section 332.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

**3. Disclosure of office hours.** A financial institution shall post the days and hours of operation at or near the public entrances to its banking offices.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

**4. Closing for cause.** A financial institution may temporarily close any of its offices for reasons that include but are not limited to good cause, emergency weather conditions and community events. If a financial institution temporarily closes any of its offices for all or any part of a banking day, the institution shall post a conspicuous notice of the closing at all points of public access to the closed offices. A closing may not become effective until such notice is posted at the office to be closed. Posting this notice relieves the institution from liability for failure to perform any of the business of the financial institution at the closed offices. The superintendent may, by adopting rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, establish standards governing the form and content of the notice required under this subsection and may require dissemination of the notice of closing by any other reasonable means.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

**5. Limitation on liability.** Any act authorized, required or permitted to be performed at, by or with respect to any institution on a day not defined as a business day or on a day the institution is closed pursuant to subsection 4 may be performed on the next succeeding business day and liability or loss of rights of any kind may not result from this delay.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

**6. Emergencies.** The superintendent may require that financial institutions be closed as provided in chapter 15.

[ 1997, c. 398, Pt. B, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §B2 (NEW).

## Chapter 15: EMERGENCIES

### §151. DECLARATION OF EMERGENCY BY GOVERNOR

Whenever it shall appear to the Governor that the welfare and security of financial institutions and credit unions under the supervision of the superintendent, or their depositors, shareholders, staffs or customers, require, or that the welfare of the State, any section thereof, the inhabitants thereof, financial institutions, credit unions, their depositors, shareholders or staffs have been or may be adversely affected by actual or threatened national emergency, forces of the natural elements, fires, explosions, strikes, epidemics, civil strife or commotion, or any other circumstances hazardous or dangerous to life, limb or property, the Governor may proclaim that a banking emergency exists. The Governor may declare such banking holidays as in his judgment such emergency conditions may require and that any financial institution or institutions and

credit union or credit unions shall be subject to special regulation as provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated if he has not defined such period in the original proclamation. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §152. SUPERINTENDENT'S POWERS DURING EMERGENCY

**1. Restrict banking transactions.** During the period of any banking emergency declared, the superintendent, in addition to all other powers conferred upon him, shall have authority to order one or more financial institutions or credit unions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of deposits or shares in any of the departments thereof as he may deem necessary or expedient and may regulate further payments therefrom as to time and amount as the interest of the public or of such financial institutions or credit unions or depositors or shareholders thereof may require, and any order or orders made by him may be amended, changed, extended or revoked, in whole or in part, whenever in his judgment circumstances warrant or require. After the termination of any such banking emergency, any such order may be continued in effect as to any particular financial institution or credit union if in the judgment of the superintendent circumstances warrant or require and the Governor approves.

[ 1975, c. 500, §1 (NEW) .]

**2. Permit special deposits.** The superintendent may by order authorize financial institutions or credit unions during such emergency and thereafter to receive new deposits or share funds, as the case may be, and such new funds shall be special deposits or shares, as the case may be, and so designated and segregated from all other such deposits or shares and may be invested only in assets approved by the superintendent as being sufficiently liquid to be available when needed to meet withdrawals on new deposits or shares, as the case may be. Such assets shall not be merged with other assets but shall be held in trust for the security and payment of new funds except that income from such assets may, to the extent authorized by the superintendent, be used for other purposes of the institution. Withdrawal of such new deposits or shares shall not be subject in any respect to restrictions or limitations made applicable to previously existing accounts under this section.

[ 1975, c. 500, §1 (NEW) .]

**3. Establish fair value of assets.** In determining the action to be taken under this section, the superintendent may place such fair value on the assets of any financial institution or credit union as in his discretion seems proper under the conditions prevailing and circumstances relating thereto.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## Chapter 16: CONFIDENTIAL FINANCIAL RECORDS

## §161. DEFINITIONS; EXEMPTIONS

### 1. Definitions.

[ 2001, c. 667, Pt. A, §5 (RP) .]

**1-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliate" has the same meaning as in section 131, subsection 1-A. [2001, c. 262, Pt. B, §2 (NEW).]

B. "Credit union authorized to do business in this State" has the same meaning as in section 131, subsection 12-A. [2001, c. 262, Pt. B, §2 (NEW).]

C. "Customer" means any person as that term "person" is defined in section 131, subsection 30 who utilized or is utilizing any service of a financial institution authorized to do business in this State or a credit union authorized to do business in this State or for whom a financial institution authorized to do business in this State or a credit union authorized to do business in this State is acting or has acted as a fiduciary in relation to an account maintained in the person's name. In addition, "customer" means any person who provides information to a financial institution authorized to do business in this State or a credit union authorized to do business in this State in an attempt to utilize any service of that financial institution or credit union. [2001, c. 262, Pt. B, §2 (NEW).]

D. "Financial institution authorized to do business in this State" has the same meaning as in section 131, subsection 17-A. [2001, c. 262, Pt. B, §2 (NEW).]

E. "Financial records" means the originals or copies of records held by a financial institution authorized to do business in this State or a credit union authorized to do business in this State or their agents or affiliates pertaining to a customer's relationship with the financial institution or credit union and includes information derived from such records. [2001, c. 262, Pt. B, §2 (NEW).]

F. "Supervisory agency" means:

- (1) The Federal Deposit Insurance Corporation;
- (2) The Office of Thrift Supervision;
- (3) The Federal Home Loan Bank Board;
- (4) The National Credit Union Administration;
- (5) The Federal Reserve Board;
- (6) The Office of the Comptroller of the Currency;
- (7) The Bureau of Financial Institutions within the Department of Professional and Financial Regulation;
- (8) The Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation;
- (9) The Bureau of Insurance within the Department of Professional and Financial Regulation;
- (10) The Office of Securities within the Department of Professional and Financial Regulation; and
- (11) The United States Securities and Exchange Commission. [2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2001, c. 262, Pt. B, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

[ 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2001, c. 182, §16 (AMD); 2001, c. 262, Pt. B, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

**2. Exemptions.** This chapter does not prohibit:

- A. The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a financial institution authorized to do business in this State or credit union authorized to do business in this State having custody of such records or the examination of such records by a certified public accountant engaged by the financial institution or credit union to perform an independent audit; [2001, c. 262, Pt. B, §3 (AMD).]
- B. The examination of any financial records by, or the furnishing of financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to, any officer, employee or agent of a supervisory agency for use solely in the exercise of the duties of the officer, employee or agent; [2001, c. 262, Pt. B, §3 (AMD).]
- C. The publication of data furnished from financial records relating to customers when the data can not be identified to any particular customer or account; [2001, c. 262, Pt. B, §3 (AMD).]
- D. The making of reports or returns required under the United States Internal Revenue Code, Chapter 61, including the submission of information concerning interest earned on accounts, investigatory activity authorized by the United States Internal Revenue Code and any use to which the reports or returns would be subjected once submitted; [2001, c. 262, Pt. B, §3 (AMD).]
- E. Furnishing information permitted to be disclosed under the Uniform Commercial Code concerning the dishonor of any negotiable instrument; [1977, c. 416, (NEW).]
- F. The exchange in the regular course of business of credit information between a financial institution authorized to do business in this State or credit union authorized to do business in this State and other financial institutions or credit unions or commercial enterprises, directly or through a consumer reporting agency; [2001, c. 262, Pt. B, §3 (AMD).]
- G. Any disclosure of financial records made pursuant to section 226; [2001, c. 262, Pt. B, §3 (AMD).]
- H. The examination of the financial records authorized by Title 36, section 112, section 176-A, subsection 4 or section 176-B; [2009, c. 213, Pt. AAAA, §1 (AMD).]
- I. Any disclosure of financial records made pursuant to Title 22, section 16, 17 or 4314; [2001, c. 262, Pt. B, §3 (AMD).]
- J. Any disclosure of financial records made under the Federal Currency and Foreign Transactions Reporting Act, Public Law 91-508, 31 United States Code, Section 5311, et seq., as amended; [2001, c. 262, Pt. B, §3 (AMD).]
- K. The examination or furnishing of any financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to any officer, employee or agent of the Treasurer of State for use solely in the exercise of that officer's, employee's or agent's duties under Title 33, chapter 41; [2001, c. 262, Pt. B, §3 (AMD).]
- L. The exchange of financial records between a financial institution authorized to do business in this State or credit union authorized to do business in this State and a consumer reporting agency or between or among a financial institution authorized to do business in this State or credit union authorized to do business in this State and its subsidiaries, employees, agents or affiliates, including those permitted under Title 10, chapter 209-B or 15 United States Code, Chapter 41; [2013, c. 588, Pt. C, §5 (AMD).]
- M. The sharing of information to the extent permitted by the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313

(2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001). This paragraph is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24; [2011, c. 518, §1 (AMD).]

N. The sharing of financial records with affiliates other than as permitted under paragraphs L and M; or [2011, c. 518, §2 (AMD).]

O. The disclosure of the financial records of a customer for the same reasons that such disclosure is permitted for nonpublic personal information under paragraph M and the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6802(e) (2010). [2011, c. 518, §3 (NEW).]

[2013, c. 588, Pt. C, §5 (AMD).]

#### SECTION HISTORY

1977, c. 416, (NEW). 1977, c. 696, §115 (AMD). 1981, c. 501, §28 (AMD). 1981, c. 706, §1 (AMD). 1983, c. 784, §§1-3 (AMD). 1985, c. 311, §§2-4 (AMD). 1985, c. 647, §1 (AMD). 1985, c. 668, §1 (AMD). 1985, c. 819, §A14 (AMD). 1989, c. 368, §§1-3 (AMD). 1989, c. 880, §E1 (AMD). 1995, c. 86, §1 (AMD). 1995, c. 419, §§4,5 (AMD). 1997, c. 315, §§10-12 (AMD). 1997, c. 398, §L6 (AMD). 1997, c. 453, §1 (AMD). 1997, c. 508, §B1 (AMD). 1997, c. 508, §A3 (AFF). 1999, c. 127, §A21 (AMD). 1999, c. 218, §1 (AMD). 2001, c. 44, §§6, 11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 262, §§B1-3 (AMD). 2001, c. 667, §A5 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF). 2009, c. 213, Pt. AAAA, §1 (AMD). 2011, c. 518, §§1-3 (AMD). 2013, c. 588, Pt. C, §5 (AMD).

## §162. DISCLOSURE OF FINANCIAL RECORDS PROHIBITED; EXCEPTIONS

A financial institution authorized to do business in this State or credit union authorized to do business in this State or its affiliates may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to that customer of that financial institution or credit union unless: [2001, c. 262, Pt. B, §4 (AMD).]

**1. Authorized disclosure.** The customer has authorized disclosure to the person;

[1997, c. 537, §1 (AMD); 1997, c. 537, §62 (AFF).]

**2. Disclosure in response to legal process.** The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163;

[2001, c. 211, §1 (AMD).]

**3. Disclosure in response to a request by the Department of Health and Human Services.** The financial records are disclosed in response to a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order;

[2007, c. 108, §1 (AMD).]

**4. Disclosure in response to a request by the Department of Labor.** The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233;

[2009, c. 213, Pt. AAAA, §2 (AMD).]

**5. Disclosure to the Department of Health and Human Services upon suspicion of financial exploitation.** The financial records are disclosed to the Department of Health and Human Services pursuant to Title 22, section 3479 because a financial institution authorized to do business in this State or its affiliate or a credit union authorized to do business in this State or its affiliate has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation; or

[ 2009, c. 213, Pt. AAAA, §3 (AMD) .]

**6. Disclosure in response to a request by the Department of Administrative and Financial Services, Bureau of Revenue Services.** The financial records are disclosed in response to a request for information by the Department of Administrative and Financial Services, Bureau of Revenue Services for purposes related to establishing, modifying or enforcing tax debts.

[ 2009, c. 213, Pt. AAAA, §4 (NEW) .]

**7. Disclosure of notice of mortgagor's right to cure.** The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

[ 2009, c. 402, §8 (NEW) .]

#### SECTION HISTORY

1977, c. 416, (NEW). 1997, c. 537, §1 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 211, §§1,2 (AMD). 2001, c. 262, §B4 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 108, §§1-3 (AMD). 2009, c. 213, Pt. AAAA, §§2-4 (AMD). 2009, c. 402, §8 (AMD).

## §163. SUBPOENA, SUMMONS, WARRANT OR COURT ORDER

**1. Service.** A financial institution authorized to do business in this State or credit union authorized to do business in this State shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the financial institution or credit union. The agency or person requesting the disclosure of financial records shall certify in writing to the financial institution or credit union the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding, a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order, a request for information by the Department of Administrative and Financial Services, Bureau of Revenue Services for purposes related to establishing, modifying or enforcing tax liabilities or a trustee process lawfully issued need not be served upon the customer.

[ 2009, c. 213, Pt. AAAA, §5 (AMD) .]

#### SECTION HISTORY

1977, c. 416, (NEW). 1985, c. 647, §2 (AMD). 1997, c. 16, §1 (AMD). 1997, c. 537, §2 (AMD). 1997, c. 537, §62 (AFF). 1999, c. 197, §1 (AMD). 2001, c. 262, §B5 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 213, Pt. AAAA, §5 (AMD).

## §164. PENALTIES

**1. Violation.** Any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State, affiliate or consumer reporting agency who intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State that intentionally or knowingly furnishes financial records in violation of this chapter or intentionally or knowingly allows an affiliate to furnish financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State or any agent or employee of a financial institution or credit union making a disclosure of financial records in good-faith reliance upon the certificate of agency or person requesting the disclosure, that the provisions of section 163 requiring prior notice to the customer have been complied with, is not liable to the customer for the disclosures and is not liable for any civil penalties under this section.

[ 2001, c. 262, Pt. B, §6 (AMD) .]

**2. Inducing violation.** Any person who intentionally or knowingly induces or attempts to induce any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State or consumer reporting agency to disclose financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation.

[ 2001, c. 262, Pt. B, §6 (AMD) .]

**3. Immunity.** A financial institution authorized to do business in the State or its affiliate or a credit union authorized to do business in the State or its affiliate that in good faith discloses financial records to the Department of Health and Human Services pursuant to section 162, subsection 5 or the Department of Administrative and Financial Services, Bureau of Revenue Services pursuant to section 162, subsection 6 is immune from civil or criminal liability that might otherwise arise from the disclosure. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

[ 2009, c. 213, Pt. AAAA, §6 (AMD) .]

### SECTION HISTORY

1977, c. 416, (NEW). 1985, c. 647, §3 (AMD). 1991, c. 824, §A11 (AMD). 2001, c. 262, §B6 (AMD). 2007, c. 108, §4 (AMD). 2009, c. 213, Pt. AAAA, §6 (AMD).



## Part 2: BUREAU OF FINANCIAL INSTITUTIONS

### Chapter 21: ADMINISTRATION

#### §211. SUPERINTENDENT

**1. Appointment; term; qualifications.** The activities of the bureau are directed by a superintendent who is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over financial institutions and to confirmation by the Legislature. The superintendent shall hold office for a term of 5 years, or until the superintendent's successor is appointed and qualified. The superintendent may be removed from office for cause by impeachment or by the Governor on the address of both branches of the Legislature, and Title 5, section 931, subsection 2 does not apply. A person appointed as superintendent must have the knowledge of, or experience in, the theory and practice of financial institutions.

[ 2001, c. 44, §7 (AMD); 2001, c. 44, §14 (AFF) . ]

**2. Salary.** The superintendent is entitled to receive a salary commensurate with the superintendent's responsibilities in accordance with Title 5 and is entitled to receive all actual travel expenses incurred in the performance of official duties.

[ 1989, c. 702, Pt. E, §6 (AMD) . ]

**3. Powers and duties.** With the approval of the commissioner, the superintendent shall organize the bureau in such a manner as the superintendent considers necessary to carry out the superintendent's responsibilities under this Title and, in cases in which a financial institution is the creditor, the superintendent's responsibilities under the Maine Consumer Credit Code pursuant to Title 9-A, section 1-301, subsection 2. The organization must take into account the need for examination and surveillance of individual institutions to ensure that each is financially sound and complies with state and applicable federal law and regulations; the need to protect consumers against unfair practices by financial institutions that provide consumer credit; the need for consumer education; the need to encourage the development of economically sound credit practices; and the need for promotion of reasonable and orderly competition among financial institutions and for promoting the provision of financial services consistent with the public interest.

[ 1995, c. 502, Pt. H, §3 (AMD) . ]

**4. Vacancy.** If the office of superintendent is vacant for any reason except the superintendent's illness or temporary absence from the State, appointment of a successor shall be made, as provided for in subsection 1, within 6 months of the creation of such vacancy.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 771, §110 (AMD). 1979, c. 663, §29 (AMD). 1981, c. 359, §4 (AMD). 1983, c. 553, §10 (AMD). 1987, c. 105, §2 (AMD). 1987, c. 402, §A85 (AMD). 1987, c. 769, §A40 (AMD). 1989, c. 702, §E6 (AMD). 1995, c. 309, §16 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 502, §H3 (AMD). 2001, c. 44, §7 (AMD). 2001, c. 44, §14 (AFF).

#### §212. DEPUTY SUPERINTENDENTS AND OTHER PERSONNEL

##### 1. Deputy superintendents.

A. The superintendent may employ deputy superintendents, subject to the commissioner's approval and in accordance with the Civil Service Law. [2007, c. 79, §1 (AMD).]

B. The superintendent shall designate a deputy superintendent to perform the duties of the superintendent whenever the superintendent is absent from the State; a deputy superintendent is directed to do so by the superintendent; there is a vacancy in the office of superintendent; or the superintendent is incapacitated by illness. In the event of a vacancy in the office of the superintendent, the superintendent's incapacitating illness or absence from the State at a time when there is no deputy superintendent, the commissioner may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months. [2007, c. 79, §2 (AMD).]

[ 2007, c. 79, §1 (AMD); 2007, c. 79, §2 (AMD) .]

## **2. Examiners and employees.**

A. The superintendent may employ personnel as the business of the bureau may require, subject to the commissioner's approval and in accordance with the Civil Service Law. The qualifications of those personnel must reflect the needs and responsibilities relating to the bureau's regulatory functions pursuant to this Title. The superintendent may authorize senior personnel of the bureau to carry out the superintendent's duties and authority. [1995, c. 502, Pt. H, §4 (AMD).]

B. The superintendent may employ or engage such expert, professional or other assistance as may be necessary to assist the bureau in carrying out its functions. [1975, c. 500, §1 (NEW).]

C. In addition to salaries or wages, all employees of the bureau shall receive their actual expenses incurred in the performance of their official duties. [1975, c. 500, §1 (NEW).]

[ 1995, c. 502, Pt. H, §4 (AMD) .]

**3. Training of bureau personnel.** At the expense of the bureau, the superintendent may train the deputy superintendents and bureau's employees, or have them trained, in a manner the superintendent determines desirable; however training programs may not place such undue emphasis upon safety and soundness of financial institutions that institutions would be inhibited by the bureau from engaging in unusual activities or loans that are in the public interest.

[ 2007, c. 79, §3 (AMD) .]

**4. Contracts with other state and federal regulatory agencies.** The superintendent may employ and engage experts, professionals or other personnel of other state and federal regulatory agencies as may be necessary to assist the bureau in carrying out its regulatory functions. The superintendent may contract bureau staff to other state and federal agencies to assist those agencies in carrying out their regulatory functions. Contracts for services under this subsection are designated sole source contracts and are not subject to the procurement requirements of Title 5, chapter 155.

[ 1999, c. 184, §6 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 553, §46 (AMD). RR 1993, c. 1, §§25,26 (COR). 1995, c. 502, §H4 (AMD). 1995, c. 628, §9 (AMD). 1999, c. 184, §6 (AMD). 2007, c. 79, §§1-3 (AMD).

## **§212-A. SECURITIES DIVISION**

**(REPEALED)**

### SECTION HISTORY

1985, c. 389, §5 (NEW). 1985, c. 785, §B54 (AMD). 1989, c. 542, §1 (RPR). 1993, c. 410, §K1 (AMD). 1995, c. 502, §H5 (AMD). 2001, c. 182, §4 (RP).

## §213. PROHIBITED RELATIONSHIPS WITH SUPERVISED INSTITUTIONS

### 1. Stockholder; payment from.

A. Neither the superintendent nor any employee of the bureau shall, during his term of office or while employed by the bureau, be an officer, director, corporator, employee, attorney or stockholder in any financial institution or financial institution holding company subject to supervision or regulation by the bureau. [1975, c. 500, §1 (NEW).]

B. The superintendent and employees of the bureau shall not, during their terms of office, receive directly or indirectly any payment or gratuity from any financial institution subject to supervision or regulation by the bureau. The prohibitions contained in this paragraph shall not be construed as prohibiting such person from being a depositor or member in any such financial institution on the same terms as are available to the public generally. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

### 2. Loans from supervised institutions.

A. If the superintendent, a deputy superintendent, examiner or other professional personnel of the bureau or such person's spouse or such person's son or daughter residing at such person's home obtains a loan from any financial institution subject to supervision or regulation by the bureau, the fact of such loan, together with the terms and conditions thereof, shall be disclosed immediately to the superintendent in writing by the person obtaining the loan and by the institution making such loan. If the superintendent is the borrower, such written disclosure shall be made to the Commissioner of Business Regulation. [1979, c. 663, §30 (AMD).]

B. A record of any indebtedness described in paragraph A shall be kept on file in the bureau so long as such indebtedness is outstanding. [1975, c. 500, §1 (NEW).]

C. The superintendent, or the commissioner if the superintendent is the borrower, may make an investigation of such loan to insure that its terms, conditions and amount are reasonable and proper under the circumstances, and that no preferential treatment has been given in the process of granting such loan. [1975, c. 500, §1 (NEW).]

[ 1979, c. 663, §30 (AMD) .]

**3. Additional limitations.** The provisions of this section shall be in addition to the limitations of Title 5, section 18.

[ 1979, c. 734, §7 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §5 (AMD). 1979, c. 663, §30 (AMD). 1979, c. 734, §7 (AMD).

## §214. REVENUES AND EXPENSES

**1. Examination expenses.** The expenses of the bureau necessarily incurred in the examination of financial institutions under its supervision shall be chargeable to such financial institutions as follows:

A. Every financial institution shall be assessed for the actual expenses incurred by the bureau in connection with any examination or investigation, whether regular or special, such assessments to include the proportionate part of the salaries of the examiners while engaged at such institutions and the board, room and travel expenses of such persons while away from home. [1975, c. 500, §1 (NEW).]

B. Such assessment shall be made by the superintendent as soon as feasible after the close of such examination or investigation and notice thereof shall forthwith be sent to such institution. [1975, c. 500, §1 (NEW).]

C. All assessments so made shall be paid to the Treasurer of State by such institutions within 30 days following such notice. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

## 2. Assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, transportation and general office and administrative expenses, the superintendent shall assess each financial institution under the superintendent's supervision at the annual rate of at least 6¢ for each \$1,000 of the total of average assets, as defined by the superintendent. The frequency of assessment may coincide with the frequency of filing periodic financial reports with the bureau but may not be more frequent than quarterly. The superintendent may raise the minimum assessment rate of 6¢ for each \$1,000 of the total of average assets by promulgating rules pursuant to section 251 at such time as economic conditions warrant such an increase. In no event may the assessment be less than \$25. [2003, c. 322, §6 (AMD).]

B. An assessment pursuant to paragraph A may be made on or before the assessment date for the period prescribed as follows:

	Period ending	Assessment date
Quarterly	March 31st	May 1st
	June 30th	August 1st
	September 30th	November 1st
	December 31st	February 1st

The superintendent shall notify the financial institution of the assessment. The assessment must be paid to the Treasurer of State within 10 days following the assessment date. [2003, c. 322, §6 (AMD).]

[ 2003, c. 322, §6 (AMD) .]

**2-A. Assessment on interstate branches of out-of-state financial institutions.** To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, general office and administrative expenses, the superintendent may assess a fee to be paid by each out-of-state financial institution that operates one or more branches in this State. The amount and timing of payment of this assessment must be determined through rulemaking by the bureau, but in no event may the amount exceed \$500 per branch annually. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1995, c. 628, §10 (NEW) .]

**2-B. Assessment on nondepository trust companies.** Nondepository trust companies that are not affiliated with a financial institution shall pay an assessment at the annual rate of not less than \$2,000 or an amount determined by the superintendent of at least 6¢ for every \$10,000 of fiduciary assets under its management, custody or care. The superintendent may further define by rule fiduciary assets under

management, custody or care or change the minimum assessment whenever economic conditions warrant such a change. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. These assessments must be paid in accordance with subsection 2, paragraph B.

[ 2003, c. 322, §7 (AMD) . ]

**2-C. Assessment on uninsured bank or merchant bank.** If an uninsured bank or merchant bank predominately engages in the business of a nondepository trust company, then the uninsured bank or merchant bank shall pay an assessment as prescribed in subsection 2-B. Otherwise, an uninsured bank or merchant bank shall pay an assessment as prescribed in subsection 2.

[ 2003, c. 322, §8 (AMD) . ]

**3. Operating fund.** The aggregate of payments provided for by this section and elsewhere in this Title is appropriated for the use of the bureau. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in succeeding fiscal years.

[ 1975, c. 500, §1 (NEW) . ]

**4. Penalty.** Any financial institution that fails to make the payments required under this section within the time specified is subject to a penalty of not more than \$500 per day for each day it is in violation of this section, which penalty, together with the amount due under the provisions of this section, may be recovered in a civil action in the name of the State.

[ 2003, c. 322, §9 (AMD) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 201, §1 (AMD). 1991, c. 669, §1 (AMD). 1991, c. 669, §2 (AFF). 1993, c. 538, §1 (AMD). 1995, c. 628, §10 (AMD). 1997, c. 398, §K1 (AMD). 2001, c. 211, §§3,4 (AMD). 2003, c. 322, §§6-9 (AMD).

## §215. RULES

The superintendent shall have the power to implement by rule any provision of law relating to the supervision of financial institutions or their subsidiaries or financial institution holding companies or their subsidiaries or to amend or repeal such rules, subject to section 251. [1985, c. 328, §2 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 328, §2 (AMD).

## §216. ADVISORY BOARDS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 501, §29 (RP).

## §217. ANNUAL REPORTS TO THE LEGISLATURE

The superintendent shall report to the Legislature by January 15th of each year the applications received and any actions taken pursuant to chapters 35 and 101. The report shall include, but not be limited to, detailed information on the number, types and legal structures of all regulated financial institutions in the State, the locations of all offices and total deposits held by these institutions, the steps taken or planned by nonstate financial institution holding companies that have received approval under chapter 101 for acquisition or

establishment to meet the credit needs of consumers and small businesses and an analysis of the impact of applications approved under chapters 35 and 101 on the banking structure of the State and the credit needs of the state's citizens and businesses. [1983, c. 816, Pt. B, §2 (NEW).]

#### SECTION HISTORY

1983, c. 816, §B2 (NEW).

## Chapter 22: EXAMINATIONS, RECORDS AND REPORTS

### §221. EXAMINATIONS

**1. Requirements.** The superintendent shall examine each financial institution organized under the laws of this State at least once every 36 months or more frequently as the superintendent determines. The superintendent may examine an out-of-state financial institution operating branches in this State in order to determine compliance with the laws of this State and to ensure that the activities of each branch are conducted in a safe and sound manner.

The superintendent must have full access to the vaults, books and papers of the financial institution or branch of the out-of-state financial institution being examined. The superintendent may make any inquiries necessary to determine the condition of the financial institution or the branch of the out-of-state financial institution and its compliance with the laws of this State. The directors, corporators, officers, employees and agents of a financial institution and the officers, employees and agents of the out-of-state financial institution, the branch of which is being examined, shall furnish statements and full information to the superintendent or the superintendent's examiners related to the condition and standing of the institution or branch being examined and all matters pertaining to its business and management.

[ 1995, c. 628, §11 (RPR) .]

**2. Exception.** In satisfaction of the examination requirements of this section, the superintendent may accept the examination reports of other state, federal or foreign regulatory agencies as a method of satisfying such requirements in whole or in part.

[ 2001, c. 211, §5 (AMD) .]

**3. Joint examinations with other state, federal or foreign regulatory agencies.** In satisfaction of the examination requirements of this section, the superintendent may conduct joint examinations of financial institutions organized under the laws of this State or branches of out-of-state financial institutions operating branches in this State with other state, federal or foreign regulatory agencies. For purposes of this section, "joint examination" means an examination conducted simultaneously by 2 or more regulatory agencies in which one examination report is issued.

[ 1995, c. 628, §11 (NEW) .]

**4. Affiliates.** The superintendent may examine the affairs of the affiliates of a financial institution, other than a federally chartered financial institution, as necessary to fully disclose the relationship between the financial institution and its affiliates and the effect of those relationships on the affairs of the financial institution.

[ 2001, c. 211, §6 (NEW) .]

**5. Service corporations.** The superintendent may examine any service corporation established pursuant to section 445 or 864 or any bank service company established under the federal Bank Service Company Act that provides services to a financial institution. Whenever a financial institution or any affiliate other than a financial institution causes to be performed for itself by contract or otherwise any services authorized for

service corporations under section 131, whether on or off premises, such performance is subject to regulation and examination of the superintendent as if such services were being performed by the financial institution or affiliate itself on its own premises.

[ 2001, c. 211, §6 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §1 (AMD). 1985, c. 763, §A64 (AMD). 1995, c. 628, §11 (RPR). 2001, c. 211, §§5,6 (AMD).

## §222. REPORTS AND OTHER INFORMATION FROM SUPERVISED INSTITUTIONS

**1. General requirement.** In addition to the reports required pursuant to this section, the superintendent may require, from a financial institution organized under the laws of this State and from an out-of-state financial institution authorized to do business in this State, reports and other information from those institutions at those times and in such form as the superintendent considers appropriate for the proper supervision and regulation of those institutions.

[ 1995, c. 628, §12 (AMD) .]

### **2. Designation of chief executive officer.**

[ 1997, c. 398, Pt. K, §2 (RP) .]

**3. Condition and income reports.** Every financial institution subject to this Title shall make quarterly, or at such times as the superintendent may direct, a report of condition and income to the superintendent. The report must be in such form and contain such information as the superintendent considers appropriate for the proper supervision and regulation of such financial institutions.

The report must contain a declaration that the report is true and correct and must be signed by an officer authorized to do so by the board of directors of the financial institution. The financial institution shall retain a copy of the report that is filed with the bureau, including the original signed declaration, and shall make it available to the bureau upon request.

A. [2009, c. 228, §2 (RP) .]

B. [2009, c. 228, §2 (RP) .]

[ 2009, c. 228, §2 (RPR) .]

**4. Use of reports prepared for other state or federal regulatory agencies.** At the discretion of the superintendent, the reporting requirements of this section may be complied with by submitting to the superintendent copies of reports prepared for other state or federal regulatory agencies by the institution that contain the information requested.

[ 1995, c. 628, §12 (AMD) .]

**5. Penalties.** Any financial institution which shall fail to furnish reports and information required pursuant to this section, within the time specified, shall be subject to a penalty of not more than \$100 for each day it is in violation of this section, which penalty may be recovered in a civil action brought in the name of the State.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §§1,2 (AMD). 1995, c. 628, §12 (AMD). 1997, c. 398, §K2 (AMD). 2001, c. 211, §7 (AMD). 2009, c. 228, §2 (AMD).

## §223. PUBLICATION AND POSTING OF REPORTS

### 1. Condition and income reports.

[ 1995, c. 24, §3 (RP) .]

**2. Reports posted in offices.** Every financial institution shall make available in all of its offices at least 10 days, but not more than 30 days, prior to the annual meeting of its stockholders, corporators or members, its latest condition report or a condition report for its most recently completed fiscal year, and a report of income for the institution's most recently completed fiscal year. In addition to making available its latest condition report or condition report for its most recently completed fiscal year, a nondepository trust company shall make available a report of its fiduciary assets and income.

[ 2009, c. 228, §3 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §6 (AMD). 1979, c. 429, §3 (AMD). 1995, c. 24, §3 (AMD). 2009, c. 228, §3 (AMD).

## §224. RECORDS TO BE KEPT BY SUPERVISED INSTITUTIONS

**1. Records for superintendent.** A financial institution authorized to do business in this State shall keep those books, accounts and records relating to all transactions that enable the superintendent to ensure full compliance with the laws of this State.

[ 1995, c. 628, §13 (AMD) .]

**2. Loans and investments.** The board of each financial institution shall establish written policies for approval of loans and investments. In the policies, the board may delegate to officers, employees or committees comprised of officers, employees, or board members, the authority to approve loans and investments. The board may retain authority to approve or ratify types or classes of loans or investments as it considers reasonable. The board shall retain authority to approve or ratify types or classes of loans or investments where the approval is otherwise specifically required by this Title. The superintendent has authority to review loan and investment policies to assure that they contribute to the safety and soundness of the institution. A record of all loans and investments of every description made by a financial institution shall be kept in a book or books appropriate, substantially in the order of the time when the loans or investments are made. The record shall be made available to the superintendent and, if requested for the purpose of reviewing the financial responsibility of management by a vote of the directors, corporators, members of stockholders, the record shall be submitted to those persons. Records of loan and investment approvals shall be maintained and shall be available for the review of directors and of the superintendent.

[ 1985, c. 83, §1 (RPR) .]

**3. Agreements with directors, officers and corporators.** A financial institution shall maintain records of all agreements between the institution and its directors, officers and corporators and all persons acting on behalf of such persons, including, but not limited to, all loans and other contracts.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY



1975, c. 500, §1 (NEW). 1985, c. 83, §1 (AMD). 1995, c. 628, §13 (AMD).

## §225. RETENTION OF FINANCIAL INSTITUTION RECORDS

**1. Superintendent's authority.** All records of financial institutions authorized to do business in this State and of credit unions authorized to do business in this State, insofar as this section does not contravene paramount federal law, must be retained for such minimum periods as the superintendent may prescribe.

[ 2003, c. 322, §10 (AMD) . ]

**2. Minimum retention period.** The superintendent may from time to time issue regulations classifying all records kept by these institutions and prescribing the minimum period for which these records shall be retained. Such periods may be permanent or for a lesser term. Such regulations may be amended or repealed from time to time; provided that any amendment or repeal shall not affect any action taken prior to such amendment or repeal.

[ 1975, c. 500, §1 (NEW) . ]

**3. Retention criteria.** Prior to issuing regulations pursuant to subsection 2, the superintendent shall consider:

A. Court and administrative proceedings in which the production of these records might be necessary or desirable; [1975, c. 500, §1 (NEW).]

B. State and federal statutes of limitation applicable to such proceedings; [1975, c. 500, §1 (NEW) . ]

C. The availability of information from other sources; and [1975, c. 500, §1 (NEW) . ]

D. Such other matters as the superintendent shall deem pertinent in order that the regulations will require retention of records for such reasonable period as is commensurate with the interests of customers, depositors, stockholders and the people of this State in having such records available. [1975, c. 500, §1 (NEW) . ]

[ 1975, c. 500, §1 (NEW) . ]

**4. Reproductions.** Reproductions, as defined by Title 16, section 456 shall be deemed acceptable, in lieu of the originals, for purposes of the prescribed periods for which such records shall be retained.

[ 1975, c. 500, §1 (NEW) . ]

**5. Disposal of records.** Institutions may dispose of any record which has been retained for the minimum period prescribed by the superintendent.

[ 1975, c. 500, §1 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §10 (AMD).

## §226. CONFIDENTIALITY

**1. Requirement.** Except as provided in subsections 2 and 3, the following information derived by or communicated to the superintendent or to any employee of the bureau is confidential and may not be disclosed or made public:

A. Information designated confidential under federal law or regulations; [2007, c. 597, §11 (NEW) . ]

B. Examination and investigative working papers and reports; [2007, c. 597, §11 (NEW).]

C. Personal identifying information of consumers and other complainants who contact the bureau; [2007, c. 597, §11 (NEW).]

D. Personal identifying information of the governing body organizers and the proposed investors of a financial institution contained in an application filed with the bureau; [2007, c. 597, §11 (NEW).]

E. Privileged trade secrets, detailed business plans and commercial or financial information that, if disclosed to the public, would cause detriment to the financial institution; and [2007, c. 597, §11 (NEW).]

F. Information other than that in paragraphs A to E for which the superintendent determines that confidential treatment is necessary and appropriate for the supervision of a specific financial institution or for state-chartered financial institutions in general. [2007, c. 597, §11 (NEW).]

[2007, c. 597, §11 (AMD).]

**2. Disclosure to Governor; Attorney General.** The superintendent may disclose such information to the Governor or to the Attorney General of this State at such times and under such circumstances as the superintendent deems necessary and appropriate to the proper discharge of his duties and responsibilities under this Title; and the superintendent shall disclose such information upon written request of the Governor or Attorney General.

[1975, c. 500, §1 (NEW).]

**3. Disclosure to others.** The superintendent may disclose the information specified in subsection 1 to the following persons or entities, except that information furnished to the superintendent that has been designated as confidential by a state or federal agency furnishing the information may not be disclosed by the recipient of the information unless disclosure has been authorized by the furnishing agency. Whenever confidential information is disclosed pursuant to this section, the information remains the property of the bureau or the furnishing agency and the recipients of the confidential information may not disclose or make public information so communicated, except as authorized by the superintendent or pursuant to other provisions of this Title:

A. The Treasurer of State and the Commissioner of Professional and Financial Regulation; [1995, c. 628, §14 (AMD).]

B. [1995, c. 628, §14 (RP).]

C. State departments that, in the opinion of the superintendent, require this information; [1995, c. 628, §14 (AMD).]

D. Other persons, including other state, foreign or federal regulatory officials, who, in the opinion of the superintendent, require this information to facilitate the general conduct of supervisory activities of the bureau; [1995, c. 628, §14 (AMD).]

E. A court of law or equity, but only with the written consent of the superintendent or pursuant to a special order of the court; and [1995, c. 628, §14 (AMD).]

F. To those persons or entities necessary in order to comply with provisions of this Title relating to legal or regulatory proceedings and to disclosure or publication of certain applications, reports, statistics and information. [2007, c. 597, §12 (AMD).]

[2007, c. 597, §12 (AMD).]

**4. Penalty.** A person who intentionally or knowingly discloses confidential information in violation of this section commits a Class E crime.

[ 2007, c. 597, §13 (RPR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §7 (AMD). 1979, c. 541, §A89 (AMD). 1995, c. 628, §14 (AMD). 1999, c. 184, §7 (AMD). 2007, c. 597, §§11-13 (AMD).

## §226-A. COOPERATIVE AGREEMENTS

The superintendent may enter into cooperative agreements with other state, federal or foreign regulatory agencies to facilitate the regulatory functions of the bureau, including, but not limited to, information sharing, coordination of examinations and joint examinations. [1999, c. 184, §8 (AMD).]

#### SECTION HISTORY

1995, c. 628, §15 (NEW). 1999, c. 184, §8 (AMD).

## §227. SUBPOENA POWERS

The superintendent shall have the power and authority to summon persons and subpoena witnesses, compel their attendance, require production of evidence, administer oaths and examine any person under oath in connection with any subject related to the supervision and regulation of financial institutions. Any summons or subpoena may be served by registered mail with return receipt. Powers granted under this section may be enforced by the Superior Court. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §228. REPORT OF VIOLATIONS

**1. Requirement.** If, in the opinion of the superintendent, any financial institution authorized to do business in this State or credit union authorized to do business in this State, or the officers, corporators, directors, employees or agents of any financial institution authorized to do business in this State or credit union authorized to do business in this State, has persistently violated any provision of this Title or rule adopted under this Title, the superintendent shall report the violation, with any remarks the superintendent determines appropriate, to the Attorney General who may institute a prosecution of the violation on behalf of the State.

[ 2003, c. 322, §11 (AMD) .]

**2. Penalty.** The penalty for such violation, unless otherwise prescribed, shall be not less than \$500 nor more than \$1000.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §11 (AMD).

## Chapter 23: CEASE AND DESIST ORDERS; REMOVAL OR CHANGE OF OFFICER OR DIRECTOR

## §231. CEASE AND DESIST ORDERS

**1. Authority.** The superintendent has the following authority over financial institutions, out-of-state financial institutions, financial institution holding companies and subsidiaries thereof.

A. The superintendent may issue and serve an order upon an institution or company requiring the institution or company to cease and desist from the violation or practice if, in the opinion of the superintendent, a financial institution or its subsidiary, financial institution holding company or its subsidiary or out-of-state financial institution subject to the provisions of this Title is engaging in or has engaged in, or the superintendent has reasonable cause to believe that the institution or company is about to engage in, any of the following violations or practices:

- (1) An unsafe or unsound practice in conducting the business of the financial institution or company;
- (2) Violation of a law, rule or regulation relating to the supervision of the institution or company;
- (3) Violation of any condition, imposed in writing, in connection with the approval of any application by the superintendent;
- (4) Violation of any written agreement entered into with the superintendent; or
- (5) An anticompetitive or deceptive practice, or one that is otherwise injurious to the public interest under chapter 24. [1995, c. 628, §16 (RPR).]

B. The superintendent may restrict the withdrawal of funds from one or more financial institutions in an order issued under paragraph A if, in the opinion of the superintendent, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, investors or the public. [2005, c. 82, §3 (AMD).]

C. The order issued under paragraph A may require the officers or directors of the institution or company or subsidiary to take affirmative action to correct any violation or practice. [1995, c. 628, §16 (RPR).]

D. Before issuing a cease and desist order against an out-of-state financial institution operating one or more branches in this State, the superintendent shall request that the financial institution's home state regulatory agency undertake an enforcement action. If the home state regulatory agency is unwilling or unable to issue an enforcement action, the superintendent may then exercise the enforcement authority available under this section. The superintendent may take enforcement action against a branch of a foreign financial institution without requesting enforcement action be taken first by the foreign regulatory agency. Where, in the opinion of the superintendent, emergency conditions make such enforcement action immediately necessary for the protection of depositors, shareholders or the public, the superintendent may proceed without requesting enforcement by the home state regulatory agency. [1995, c. 628, §16 (NEW).]

[ 2005, c. 82, §3 (AMD) .]

### **2. Notice; hearing.**

A. Prior to the issuance of any order to cease and desist in accordance with subsection 1, notice shall be given to the institution by the superintendent. Such notice shall contain a statement of the facts upon which the order is to be issued, and the date upon which such order is to take effect. [1975, c. 500, §1 (NEW).]

B. Upon petition of any interested party, a hearing in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375 shall be provided prior to the effective date of any order issued pursuant to subsection 1, except as provided in subsection 3. [1979, c. 663, §31 (AMD).]

[ 1979, c. 663, §31 (AMD) .]

**3. Temporary cease and desist order.**

A. Whenever, in the opinion of the superintendent, the violation or practice set forth in subsection 1 requires immediate action for the protection of depositors or investors, or the violation or practice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of the assets or earnings of the institution, the superintendent may issue orders pursuant to subsection 1, which become effective upon service thereof, without prior notice or hearing. [2005, c. 82, §4 (AMD).]

B. If an order is issued by the superintendent pursuant to paragraph A, the superintendent shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party. [1975, c. 500, §1 (NEW).]

[ 2005, c. 82, §4 (AMD) .]

**4. Power as additional.** The power and authority granted to the superintendent by this section shall be in addition to any enforcement or regulatory powers granted elsewhere in this Title.

[ 1975, c. 500, §1 (NEW) .]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1979, c. 663, §31 (AMD). 1985, c. 328, §§3,4 (AMD). 1995, c. 628, §16 (AMD). 2005, c. 82, §§3,4 (AMD).

**§232. REMOVAL OR PROHIBITION OF OFFICER OR DIRECTOR**

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section. The superintendent may prohibit an officer or director of a financial institution, financial institution holding company or branch of an out-of-state financial institution from participating in any manner in the conduct of the affairs of a financial institution, financial institution holding company or branch of an out-of-state financial institution if the superintendent determines that such action is necessary for the protection of the public, the financial institution, financial institution holding company or out-of-state financial institution or the interests of the institution's depositors or creditors. [1997, c. 660, Pt. A, §2 (AMD).]

**1. Grounds for removal.** The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution or financial institution holding company if:

A. In the opinion of the superintendent, that officer or director has directly or indirectly:

- (1) Violated a law, rule, regulation or cease and desist order that has become final;
- (2) Engaged in or participated in any unsafe or unsound practice; or
- (3) Committed or engaged in any act, omission, or practice that constitutes a breach of the fiduciary duty of the officer or director; [1993, c. 538, §2 (RPR).]

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

- (1) The financial institution or financial institution holding company has suffered or will probably suffer financial loss or other damage;
- (2) The interests of the financial institution's depositors or creditors or the public have been or could be prejudiced; or
- (3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty; and [2005, c. 83, §2 (AMD).]

C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution or financial institution holding company. [2005, c. 83, §2 (AMD).]

D. [2005, c. 83, §3 (RP).]

E. [2005, c. 83, §4 (RP).]

[ 2005, c. 83, §§2-4 (AMD) .]

**1-A. Additional grounds for removal.** The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution or financial institution holding company if:

A. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution or financial institution holding company by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage; or [2005, c. 83, §5 (NEW).]

B. The officer or director has been removed or prohibited from participation in any manner in the conduct of the affairs of the financial institution by the appropriate federal banking agency. [2005, c. 83, §5 (NEW).]

[ 2005, c. 83, §5 (NEW) .]

## **2. Notice of intent to remove.**

A. The written notice required in subsection 1 shall be in the form prescribed by the Maine Administrative Procedure Act, Title 5, section 9052, subsection 4 and shall be served not less than 30 nor more than 60 days prior to the date set for the hearing. [1977, c. 694, §156 (RPR).]

B. The superintendent shall serve such written notice in accordance with Rule 4 of the Maine Rules of Civil Procedure upon the officer or director involved and copies of such notice must be served upon the financial institution or financial institution holding company of which the person is an officer or director or in the conduct of whose affairs the person has participated. [1997, c. 182, Pt. C, §3 (AMD).]

[ 1997, c. 182, Pt. C, §3 (AMD) .]

## **3. Effect of notice.**

A. If the superintendent considers it necessary for the protection of the financial institution or financial institution holding company or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office or prohibit the officer or director from further participation in any manner in the conduct of the affairs of the financial institution or financial institution holding company. [1997, c. 182, Pt. C, §4 (AMD).]

B. Such suspension or prohibition shall become effective upon service of said notice and, unless stayed by the Superior Court pursuant to subsection 4, shall remain in effect pending completion of administrative proceedings pursuant to this section and until such time as the superintendent shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the officer or director, until the effective date of any such order. [1975, c. 500, §1 (NEW).]

[ 1997, c. 182, Pt. C, §4 (AMD) .]

**4. Stay of suspension or prohibition.** Any officer or director adversely affected by a suspension or prohibition contained in a written notice pursuant to subsection 3 may apply to the Superior Court in the county where the financial institution of which he is an officer or director has its main office or in the

Superior Court of Kennebec County for a stay of such suspension or prohibition pending completion of administrative proceedings required under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

[ 1975, c. 500, §1 (NEW) .]

#### **5. Hearing.**

A. The superintendent shall hold a hearing at the time and place specified in the notice required under subsection 2, such hearing to be governed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. [1979, c. 429, §4 (AMD).]

B. Unless the officer or director affected shall appear at such hearing, he shall be deemed to have consented to the issuance of an order for such removal or prohibition. [1975, c. 500, §1 (NEW) .]

C. In the event of consent pursuant to paragraph B, or if upon the record made at any such hearing the superintendent finds that any of the grounds specified in the notice have been established, the superintendent may issue such orders of suspension or removal from office or prohibition from participation in the conduct of the affairs of the financial institution or financial institution holding company, as the superintendent considers appropriate. [1997, c. 182, Pt. C, §5 (AMD).]

D. Notwithstanding any provision to the contrary, as prescribed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, such order shall be issued not later than 30 days after the close of the hearing if any, held pursuant to this section. [1987, c. 402, Pt. A, §86 (AMD).]

[ 1997, c. 182, Pt. C, §5 (AMD) .]

#### **6. Effective date.**

A. Any order issued pursuant to subsection 5 becomes effective at the expiration of 30 days after service upon the officer or director and the financial institution or financial institution holding company concerned; provided that an order issued upon consent becomes effective within the time specified therein. [1997, c. 182, Pt. C, §6 (AMD).]

B. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the superintendent or a court having jurisdiction relating thereto. [1975, c. 500, §1 (NEW).]

[ 1997, c. 182, Pt. C, §6 (AMD) .]

#### **7. Participation in a felony.**

A. The superintendent may issue written notice, pursuant to subsections 2 and 3, to any officer or director charged in any information, complaint, or indictment with commission of or participation in a felony involving dishonesty or breach of trust, pursuant to laws of the State of Maine or of the United States. Such suspension or prohibition shall remain in effect until terminated by the superintendent or said information, complaint, or indictment is finally disposed of. [1975, c. 500, §1 (NEW) .]

B. At such time as a judgment of conviction with respect to such offense is entered against such officer or director, and such judgment is not subject to further appellate review, the superintendent may issue and serve upon such officer or director an order removing the officer or director from such office or prohibiting the officer or director from further participation in the conduct of the affairs of the financial institution or financial institution holding company except with the written consent of the superintendent. Such order becomes effective after service upon the officer or director and the financial institution or financial institution holding company. [1997, c. 182, Pt. C, §7 (AMD).]

C. A finding of not guilty or other disposition of the charge in paragraph A shall not preclude the superintendent from instituting proceedings pursuant to this section on the grounds set forth in subsection 1. [1975, c. 500, §1 (NEW).]

[ 1997, c. 182, Pt. C, §7 (AMD) .]

**8. Prohibition on participation in banking industry.** An officer or director may be prohibited from participating in the banking industry in accordance with the following.

A. Any officer or director who, pursuant to an order issued under this section, has been removed from office in a financial institution, out-of-state financial institution or financial institution holding company or prohibited from participating in the conduct of the affairs of a financial institution, out-of-state financial institution, or financial institution holding company may not, while such order is in effect, continue or commence to hold any office, or participate in any manner in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company. [1997, c. 660, Pt. A, §5 (NEW).]

B. If, on or after the date an order is issued under this section that removes from office an officer or director or prohibits an officer or director from participating in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company, the order is modified, terminated or set aside in accordance with subsection 6, then the prohibition imposed in paragraph A must be similarly modified, terminated or set aside. [1997, c. 660, Pt. A, §5 (NEW) .]

[ 1997, c. 2, §35 (COR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 694, §156 (AMD). 1979, c. 429, §§4,5 (AMD). 1987, c. 402, §A86 (AMD). 1993, c. 538, §2 (AMD). 1995, c. 628, §17 (AMD). RR 1997, c. 2, §35 (COR). 1997, c. 182, §§C1-7 (AMD). 1997, c. 660, §§A1-5 (AMD). 2005, c. 83, §§2-5 (AMD).

## §233. ENFORCEMENT BY SUPERIOR COURT

Orders issued by the superintendent pursuant to sections 231 and 232 shall be enforced by the Superior Court, subject to the following conditions and limitations: [1975, c. 500, §1 (NEW) .]

**1. Appeal of order.** Any person aggrieved and directly affected by an order of the superintendent issued pursuant to sections 231 and 232 shall be entitled to judicial review of the order pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

[ 1977, c. 694, §157 (RPR) .]

**2. Limitation on liability.** No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the superintendent, notwithstanding a subsequent decision by any court invalidating the order, regulation or definition.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 694, §157 (AMD).



## §234. NOTICE TO FEDERAL AUTHORITIES

**1. Requirement.** In connection with any proceeding under section 231 or 232 involving a financial institution under the concurrent supervision of a federal agency and the bureau, the superintendent shall provide the appropriate federal agency with notice of any such proceeding and the grounds therefor. Such proceeding may then be continued jointly or by either the federal agency or the superintendent.

[ 2007, c. 79, §4 (AMD) . ]

**2. Failure to notify.** Failure of the superintendent to give such notice shall not constitute a ground for attacking the validity of the order.

[ 1975, c. 500, §1 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 2007, c. 79, §4 (AMD).

## §235. CHANGE OF DIRECTOR OR SENIOR EXECUTIVE OFFICER

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Financial institution in troubled condition" includes any financial institution:

- (1) That is subject to a cease and desist order issued under section 231 or issued by a federal regulator under applicable federal law;
- (2) That is subject to a written agreement as contemplated under section 231;
- (3) That has a composite rating of 4 or 5 under the federal Uniform Financial Institutions Rating System or comparable composite ratings under a rating system employed by the superintendent;
- (4) That is not in compliance with section 412-A or is not in compliance with applicable federal capital standards; or
- (5) That has been notified in writing by the superintendent that it is in troubled condition for the purposes of this section. [ 2007, c. 79, §5 (NEW) . ]

B. "Senior executive officer" means any person who holds the title of president, chief executive officer, chief operating officer, chief financial officer, chief lending officer or chief investment officer or, without regard to title, salary or compensation, performs the function of one or more of these positions. "Senior executive officer" also includes any other person identified by the superintendent, whether or not hired as an employee, with significant influence over, or who participates in, major policy-making decisions of a financial institution. [ 2007, c. 79, §5 (NEW) . ]

[ 2007, c. 79, §5 (NEW) . ]

**2. Filing notice.** A financial institution in troubled condition shall file notice with the superintendent at least 30 days prior to adding or replacing a member of its board of directors or governing body, employing a senior executive officer or changing the duties of a senior executive officer so that the senior executive officer would assume a different senior executive officer position. The notice must be in a form and contain content as prescribed by the superintendent. For good cause shown, the superintendent may accept notice of less than 30 days.

[ 2007, c. 79, §5 (NEW) . ]

**3. Approval.** The superintendent shall approve or disapprove the notice under subsection 2 within 10 days after the receipt of the notice.

[ 2007, c. 79, §5 (NEW) . ]

#### SECTION HISTORY

2007, c. 79, §5 (NEW) .

## Chapter 24: ANTICOMPETITIVE OR DECEPTIVE PRACTICES

### §241. ANTICOMPETITIVE OR UNFAIR PRACTICES

#### 1. Rules and regulations.

A. The superintendent has the power to adopt rules, in accordance with section 251, defining, limiting or proscribing acts and practices that, when engaged in by a financial institution authorized to do business in this State or its subsidiaries, by a credit union authorized to do business in this State or by a financial institution holding company or its subsidiaries, are determined to be anticompetitive, unfair, deceptive or otherwise injurious to the public interest. [1999, c. 218, §2 (AMD) . ]

B. Such rules and regulations may be promulgated by the superintendent upon complaint of interested parties, or in rule-making proceedings initiated by the bureau. [1975, c. 500, §1 (NEW) . ]

C. The authority granted to the superintendent herein shall be in addition to the cease and desist powers granted in section 231; and the fact that rules and regulations have not been promulgated hereunder shall not affect the validity of any cease and desist order issued pursuant to section 231, subsection 1. [1975, c. 500, §1 (NEW) . ]

D. Whenever the superintendent has reason to believe that any financial institution authorized to do business in this State or any credit union authorized to do business in this State is using or is about to use any method, act or practice in violation of section 231 and that proceedings would be in the public interest, he may bring an action in the name of the State against such entity to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. At least 10 days prior to commencement of any action under this section, the superintendent shall notify the entity of his intended action, and give the entity the opportunity to confer with the superintendent in person or by counsel or other representative as to the proposed action. Notice shall be given the entity by mail, postage prepaid, sent to their usual place of business. The superintendent may proceed without notice as required by this section upon a showing of facts by affidavit of immediate irreparable harm to the consumers of the State. The action may be brought in the Superior Court of the county in which such entity is located or has its principal place of business or may be brought in the Superior Court of Kennebec County. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section. Any district attorney or law enforcement officer receiving notice of any alleged violation of this section shall immediately forward written notice of same with any other information that he may have to the office of the superintendent. Any person or entity, who violates the terms of an injunction issued under this section, shall forfeit and pay to the State to be applied to the General Fund a civil penalty of not more than \$10,000 for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the superintendent, acting in the name of the State, may petition for recovery of such civil penalty. In any action under this section where a permanent injunction is issued, the court may order the person or entity against whom the permanent injunction has been issued to pay to the State the costs of

the investigation of that person or entity by the superintendent and the costs of suit, which fund shall be applied in the carrying out of the duties of the Bureau of Financial Institutions. [1977, c. 302, (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

[ 1999, c. 218, §2 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

## **2. Prices of financial services.**

A. The authority granted to the superintendent in subsection 1 shall not be construed as authorizing the superintendent to establish the price at which financial services may be offered to the public, except that the superintendent may establish prices for such services upon a showing that the manner and method of actual pricing of a particular service, and the offering of such to the public, is anticompetitive or deceptive. [1975, c. 500, §1 (NEW).]

B. An interested party affected by the exercise of the superintendent's authority in paragraph A shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**3. Alternative mortgage instruments.** The Legislature declares that the preemption provided by the United States Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320, Section 804, shall not apply. The Legislature further declares that the superintendent shall have the power to promulgate regulations in accordance with section 251, which define, limit or otherwise authorize the use of alternative mortgage instruments by financial institutions. The Legislature further finds and declares that regulations promulgated prior to the preemption of the United States Garn-St. Germain Depository Institutions Act of 1982 shall continue to have full force and effect.

[ 1983, c. 307, §2 (NEW) .]

**4. Attorneys.** Every financial institution authorized to do business in this State and every credit union authorized to do business in this State that accepts an application for a residential mortgage loan for one to 4 residential units and that requires that an attorney search the title of the subject real estate shall permit the prospective mortgagor to select a qualified attorney of the mortgagor's choice to search the title of the subject real estate and certify that title to the institution or land title insurance company, except that the institution may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the institution may determine necessary to protect its interests, as long as, if all requirements are met by the attorney chosen by the mortgagor, additional legal costs may not be assessed by the financial institution or credit union against the mortgagor for review of the title search or any other relevant title documents by the institution, its title company or attorney.

Every financial institution and credit union subject to this subsection shall provide written notice to the prospective mortgagor that the mortgagor has the right to select a qualified attorney of the mortgagor's choice for the performance of title work. The notice must inform the prospective mortgagor that, if the attorney chosen by the mortgagor meets the financial institution's requirements, additional fees may not be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that the mortgagor does not wish to exercise the mortgagor's right to select an attorney, then the institution may recommend an attorney.

This subsection may not be construed to require certification of title to a financial institution or credit union if that institution does not so require or to a land title insurance company if that company does not so require.

Any violation of this section by a financial institution authorized to do business in this State or credit union authorized to do business in this State is an anticompetitive or deceptive practice as defined in this chapter and subject to the remedies provided in this chapter in addition to such other remedies as may be provided otherwise by law.

[ 1999, c. 218, §3 (AMD) .]

**5. Availability of funds for items deposited.** With respect to items deposited into an account, financial institutions authorized to do business in this State and credit unions authorized to do business in this State shall make those funds available for withdrawal from that account within a reasonable time. The superintendent may adopt rules setting forth limitations and disclosure requirements governing funds availability. For purposes of this section, account means a checking account or any other transactional account, a savings account or a time account. If a federal law or regulation governing availability of funds is in effect, rules adopted under this subsection may not be more restrictive with respect to time periods in which funds must be available for withdrawal than those federal laws or regulations.

[ 1999, c. 218, §4 (AMD) .]

**6. Returned check charges.**

[ 1989, c. 426, (NEW); T. 9-B, §241, sub-§6 (RP) .]

**7. Restrictions on use of names of Maine financial institutions on credit cards.** A credit card may be titled and may have the name of a financial institution authorized to do business in this State or credit union authorized to do business in this State on the card if:

A. The terms of the credit card contract comply with the laws applicable to that financial institution or credit union; or [2003, c. 322, §12 (AMD) .]

B. The name and state of the financial institution or credit union underwriting the debt appears on the credit card. [2003, c. 322, §12 (AMD) .]

[ 2003, c. 322, §12 (AMD) .]

**8. Deposit production offices prohibited.** No financial institution authorized to do business in this State or credit union authorized to do business in this State may operate deposit production offices in this State. The superintendent shall annually review the level of lending in this State relative to the level of deposits in this State of each financial institution authorized to do business in this State and each credit union authorized to do business in this State to determine whether deposit production offices are being operated. If the superintendent determines that a financial institution authorized to do business in this State or credit union authorized to do business in this State is operating deposit production offices, the superintendent may issue a cease and desist order pursuant to chapter 23. The superintendent may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. This subsection does not apply to limited purpose banks.

[ 2005, c. 83, §6 (AMD) .]

**9. Restrictions on the use of the terms "savings," "bank" and derivatives of those terms.** This subsection governs the use of the terms "savings," "bank" and derivatives of those terms.

A. A person, if duly authorized under the laws of this State, another state or the United States to conduct the business of banking, may use as a part of the name or title under which it conducts business in this State the terms "saving," "savings," "savings bank," "bank," "banker," "trust," "trust company," "banking" or "trust and banking company." The superintendent may require the filing of supporting documentation relating to this paragraph in the form and manner and containing such information as the superintendent may prescribe. [2001, c. 211, §8 (AMD) .]

B. Except as provided in paragraph A, a person, without prior written approval of the superintendent, may not use the terms "saving," "savings," "savings bank," "bank," "banker," "trust," "trust company," "banking" or "trust and banking company" or any derivatives of those terms as part of the name or title under which business is conducted or as a designation of such business. In determining whether to grant written permission, the superintendent shall consider whether the business to be conducted is similar to the business of banking and whether using those terms or any derivatives of those terms could be deceptive or otherwise injurious to public interest. [1995, c. 628, §18 (NEW).]

C. This subsection does not apply to out-of-state financial institutions, corporations or partnerships that, in the ordinary course of their business, have to file with the Secretary of State in processing the routine disposition of assets acquired by legitimate business dealings. [1995, c. 628, §18 (NEW).]

D. A person who violates any provision of this subsection is subject to a civil penalty of not more than \$10,000 for each violation. [1995, c. 628, §18 (NEW).]

E. This subsection does not prohibit the use of any name of a person who was duly qualified to do business as a foreign corporation in that name under former Title 13-A, section 1201 on February 1, 1996. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §6 (COR).]

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §6 (COR) .]

**10. Deposit concentration.** A financial institution authorized to do business in this State, a financial institution not authorized to do business in this State, a financial institution holding company, a foreign bank or a foreign bank holding company may not consolidate or merge or acquire control, directly or indirectly, of all or part of a financial institution authorized to do business in this State if, as the result of the consolidation, acquisition or merger, the acquiring institution would hold or control more than 30% of the total amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State; except, upon consideration of the decision-making criteria found in section 253, the superintendent may waive the 30% deposit concentration limit on a case-by-case basis. In calculating the amount of deposits that an acquiring institution may hold or control under this section, credit union shares are added to the amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State. The 30% deposit concentration limit does not apply to credit unions authorized to do business in this State.

[ 2007, c. 79, §6 (AMD) .]

**11. Choice of insurance producer.** A financial institution authorized to do business in this State or credit union authorized to do business in this State, or a financial institution holding company or an affiliate of a financial institution holding company that is authorized to do business in this State as insurance producer under section 448, or pursuant to applicable federal law, and Title 24-A to negotiate or sell insurance products to purchasers or borrowers may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of insurance producer, consultant or company under applicable provisions contained in Title 24-A.

Any violation of this subsection is an anticompetitive or deceptive practice under this chapter and is subject to the remedies provided in this chapter in addition to those remedies otherwise provided by law.

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

[ 1999, c. 218, §5 (AMD) .]

**12. Electronic banking.** A financial institution or credit union organized under the provisions of federal law, law of another state or law of a foreign country that does not meet the definition of authorized to do business in this State, pursuant to section 131, may engage in the business of banking through electronic or similar means in this State and is subject to the provisions of Parts 1 and 2 to the same extent Parts 1 and 2 apply to a financial institution authorized to do business in this State.

[ 2001, c. 211, §9 (NEW) .]

**12. (REALLOCATED TO T. 9-B, §241, sub-§13) Privacy of consumer information.**

[ 2001, c. 1, §15 (RAL); 2001, c. 262, Pt. B, §7 (NEW) .]

**13. (REALLOCATED FROM T. 9-B, §241, sub-§12) Privacy of consumer information.** A financial institution authorized to do business in this State or a credit union authorized to do business in this State shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); or the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001). This subsection is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

Any violation of this subsection is an anticompetitive or deceptive practice for the purposes of this chapter and is subject to the remedies provided in this chapter in addition to remedies otherwise provided by law.

[ 2001, c. 1, §15 (RAL) .]

**14. Choice of accounting, tax or attest services provider.** A financial institution authorized to do business in this State or a credit union authorized to do business in this State or a financial institution holding company or an affiliate of a financial institution holding company that is authorized to do business in this State may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the financial institution or credit union may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the financial institution or credit union may determine necessary to protect its interest.

[ 2007, c. 185, §3 (NEW) .]

**15. Deceptive use of names.** A person may not use in an unauthorized or deceptive manner the name, abbreviated name or title of any financial institution authorized to do business in this State, credit union authorized to do business in this State, financial institution holding company or their affiliates or subsidiaries in any written or oral advertisement or solicitation. Use of a name, abbreviated name or title is not unauthorized or deceptive if the person using the name, abbreviated name or title has obtained written authorization for such use from the financial institution, credit union, holding company, affiliate or subsidiary or if the use is limited solely to a truthful written advertisement or solicitation comparing the relative attributes of similar products or services offered by the financial institution, credit union, holding company, affiliate or subsidiary and the person using the name, abbreviated name or title.

The superintendent may, through the Attorney General, bring a civil action against any person who willfully violates any provision of this subsection. The penalty for violation of this subsection may not exceed \$5,000 for each violation.

Any financial institution, credit union, holding company, affiliate or subsidiary whose name, abbreviated name or title is used by any person in violation of this subsection may, in addition to any other remedy available under the laws of this State, bring an action to enjoin such use and recover damages. The court shall award actual damages or \$5,000 for each violation, whichever is greater, plus attorney's fees and costs, upon a finding that a violation has occurred.

[ 2009, c. 103, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 302, (AMD). 1983, c. 307, §2 (AMD). 1985, c. 311, §5 (AMD). 1985, c. 561, (AMD). 1989, c. 426, (AMD). 1991, c. 135, (AMD). 1991, c. 755, §2 (AMD). 1995, c. 628, §18 (AMD). 1997, c. 315, §13 (AMD). 1997, c. 660, §D2 (AMD). 1999, c. 218, §§2-5 (AMD). RR 2001, c. 1, §15 (COR). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B6 (COR). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 211, §§8,9 (AMD). 2001, c. 262, §B7 (AMD). 2003, c. 322, §12 (AMD). 2005, c. 83, §6 (AMD). 2007, c. 79, §6 (AMD). 2007, c. 185, §3 (AMD). 2009, c. 103, §1 (AMD). MRS T. 9B, §241/6 (AMD).

## §242. DECEPTIVE ADVERTISING

**1. Rules.** The superintendent has authority to adopt rules, pursuant to section 251, defining, limiting or proscribing advertising by a financial institution authorized to do business in this State, a credit union authorized to do business in this State, an association of such institutions or a financial institution holding company, or representations made by those institutions, that is false, misleading or deceptive.

[ 1999, c. 218, §6 (AMD) .]

### 2. Orders against deceptive advertising.

A. The superintendent may issue an order in accordance with section 231 upon determining that any entity or entities described in subsection 1 has issued an advertisement or made a representation which is false, misleading or deceptive. [1975, c. 500, §1 (NEW).]

B. If an entity has already issued or published such an advertisement or representation, the superintendent may order the entity to take such affirmative corrective action as he deems necessary and appropriate under the circumstances for the purpose of informing and protecting the public and other interested parties. [1975, c. 500, §1 (NEW).]

C. The fact that rules and regulations have not been promulgated pursuant to this section shall not affect the validity of any order issued hereunder. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

**3. Appeal.** An interested party affected by the exercise of the superintendent's authority in subsection 2, paragraphs A or B shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2.

[ 1975, c. 500, §1 (NEW) .]

**4. Advertisement of insurance products.** In any advertisement of an insurance product offered pursuant to section 448, a financial institution or its affiliate shall include a statement that the product is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable.

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

[ 1997, c. 315, §14 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 315, §14 (AMD). 1999, c. 218, §6 (AMD).

## §243. TIE-IN ARRANGEMENTS

**1. Prohibition.** A financial institution authorized to do business in this State or a credit union authorized to do business in this State may not in any manner extend credit, lease or sell property, or furnish any service, or fix or vary the consideration for any of the foregoing on the condition, agreement, requirement or understanding:

A. That the customer obtain some additional or other credit, property or other service from such financial institution other than a loan, discount, deposit or trust service. This paragraph does not prohibit a tie-in involving insurance products that is permitted under Title 24-A; [1997, c. 315, §15 (AMD).]

B. That the customer obtain some additional or other credit, property or service from a subsidiary of such financial institution, a financial institution holding company of such financial institution or from any other subsidiary of such financial institution holding company; [1999, c. 218, §7 (AMD).]

C. That the customer provide some additional or other credit, property or service to such financial institution, other than those related to and usually provided in connection with a loan, discount, deposit or trust service; [1999, c. 218, §7 (AMD).]

D. That the customer provide some additional or other credit, property or service to a subsidiary of such financial institution, a financial institution holding company of such financial institution or from any other subsidiary of such financial institution holding company; or [1999, c. 218, §7 (AMD).]

E. That the customer may not obtain some additional or other credit, property or service from a competitor of such financial institution, a subsidiary of a competitor financial institution, a financial institution holding company of a competitor financial institution or any other subsidiary of such competitor financial institution holding company, other than a condition or requirement that such financial institution shall reasonably impose in a credit transaction to assure the soundness of the credit. [1999, c. 218, §7 (AMD).]

[ 1999, c. 218, §7 (AMD) .]

**2. Exceptions.** The superintendent may, pursuant to regulations issued in accordance with section 251, permit such exceptions to the prohibitions in subsection 1 as he considers will not be contrary to the public interest and the purposes of this section.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §32 (AMD). 1997, c. 315, §15 (AMD). 1999, c. 218, §7 (AMD).



## §243-A. ELECTRONIC TERMINALS; FEES FOR AND RECORDS OF TRANSACTIONS

**1. Fees for use of terminals.** A financial institution authorized to do business in this State or a credit union authorized to do business in this State that operates electronic terminals may charge fees for the use of the terminals as specified in this section.

A. A financial institution may charge a reasonable foreign transaction fee for the use of an electronic terminal if the fee is disclosed:

- (1) On a sign posted on the electronic terminal or in clear view of a customer while viewing the electronic terminal; or
- (2) Electronically during the course of the transaction in a manner that permits a customer to cancel the transaction without incurring the transaction fee.

For the purposes of this paragraph, "foreign transaction fee" means a fee charged for the use of an electronic terminal to a noncustomer of the financial institution that owns the electronic terminal.

[1991, c. 680, §1 (NEW).]

B. A financial institution may charge its own customers a reasonable fee for the use of an electronic terminal. [1991, c. 680, §1 (NEW).]

[1999, c. 218, §8 (AMD).]

**2. Records of terminal transactions.** For each transaction processed by an electronic terminal, except for a transaction involving a negotiable instrument that is its own receipt, the electronic terminal must make available to the customer at the time of the transaction a record of each transaction. The record must include:

A. The amount of the transaction. A fee for the transaction may be included in this amount if the electronic terminal is owned or operated by a financial institution other than the financial institution that holds the customer's account if the fee is disclosed on the record of the transaction and in accordance with subsection 1; [1991, c. 680, §1 (NEW).]

B. The date of the transaction; [1991, c. 680, §1 (NEW).]

C. The type of transaction and the type of account to which or from which money is transferred. Codes may be used for this purpose if they are explained on the record of the transaction; [1991, c. 680, §1 (NEW).]

D. A number or code that identifies the customer, the customer's account number or the device used to access the electronic terminal; [1991, c. 680, §1 (NEW).]

E. The location of the electronic terminal or a number or code identifying that location; and [1991, c. 680, §1 (NEW).]

F. The name of each 3rd party to whom or from whom money is transferred, if the name provided by the customer can be reproduced by the electronic terminal on the record of the transaction. A code may be used for this purpose only if it is explained on the record of the transaction. [1991, c. 680, §1 (NEW).]

[1991, c. 680, §1 (NEW).]

**3. Agreement to share electronic terminals.** An agreement to share electronic terminals may not prohibit, limit or restrict the right of a financial institution authorized to do business in this State or a credit union authorized to do business in this State to charge a customer any fees allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations under this section, except that a financial institution or credit union authorized to do business in this State may mutually agree with one or

more other financial institutions or credit unions not to charge foreign transaction fees, as that term is defined in subsection 1, to the customers or members of those financial institutions or credit unions that are parties to the agreement.

[ 1999, c. 218, §9 (AMD) .]

#### SECTION HISTORY

1991, c. 680, §1 (NEW). 1991, c. 853, §1 (AMD). RR 1997, c. 2, §36 (COR). 1999, c. 25, §1 (AMD). 1999, c. 218, §§8,9 (AMD).

## §244. EXEMPTION

A financial institution authorized to do business in this State or credit union authorized to do business in this State subject to the provisions of this chapter is exempt from the provisions of Title 5, chapter 10.

[2003, c. 322, §13 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §13 (AMD).

## Chapter 25: ADMINISTRATIVE PROCEDURES

## §251. RULE-MAKING

Promulgation of rules of the bureau, and amendments thereto, shall conform to the requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. [1983, c. 182, (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§7-A,8,9 (AMD). 1977, c. 694, §158 (RPR). 1983, c. 182, (AMD).

## §252. DECISION-MAKING

Decision-making of the bureau shall conform to the requirements of this section. [1975, c. 500, §1 (NEW) .]

**1. Definition.** "Decision-making" is that process by which the superintendent determines whether an application for a charter, branch, merger, acquisition, conversion, subsidiary formation or other similar request submitted to the bureau should be approved or disapproved, but does not include applications for a change in a financial institution's organizational documents, changes in the capital structure of any institution, conversions of investor ownership pursuant to section 345-B or such other matters of a similar nature as the superintendent may determine, unless otherwise provided in this Title.

[ 1997, c. 398, Pt. K, §3 (AMD) .]

### **2. Application and notice.**

A. Upon receipt of an application subject to this section, the superintendent shall determine whether the application is complete. The superintendent shall have the power to request modifications in, and additional information relating to, any application prior to certifying its completeness. [1977, c. 694, §159 (RPR) .]

B. As soon as the superintendent determines that the application is complete, he shall instruct the applicant to provide notice of the application in the manner and form prescribed in Title 5, section 9052. [1977, c. 694, §159 (RPR) .]

C. The superintendent may suspend or postpone action on an application after the first publication of notice pursuant to paragraph B, upon written request of the applicant or on his own initiative for good cause shown. The superintendent shall promptly provide notice of any suspension or postponement in the same manner and in the same publications in which the original notice of application was provided. If and when action is resumed on the application, the superintendent shall again provide notice in the same manner and in the same publications in which the preceding notices were provided. [1977, c. 694, §159 (RPR).]

[1977, c. 694, §159 (RPR).]

**2-A. Preliminary review.** Prior to the filing of an application pursuant to subsection 2, a potential applicant may request a preliminary review of the prospective application. If the review is undertaken, the bureau may assess the prospective applicant a fee in accordance with the bureau's fee schedule. A fee paid for the preliminary review may be credited to the application fee if and when an application is filed within a reasonable time.

[1997, c. 398, Pt. K, §4 (NEW).]

**3. Application on file.** Applications accepted by the superintendent shall be placed on public file at the office of the bureau, and shall be made available for public inspection or copying, at cost; provided that the superintendent shall delete from the public file copy of an application all confidential information, materials and statements regarding the applicant.

[1975, c. 500, §1 (NEW).]

**3-A. Confidential treatment of other state and federal regulatory information.** Any records or information in the possession of any state or federal agency involved in the regulation of financial institutions or financial institution holding companies or the affiliates or subsidiaries of financial institutions or financial institution holding companies that is recognized under state or federal law as confidential remains confidential if delivered or disclosed to the superintendent or a bureau employee in the course of a decision-making proceeding under this chapter. The superintendent may rely upon any records or information considered confidential pursuant to this subsection as the basis for a decision on an application if these records or information is disclosed to the applicant and any interested party to the proceeding.

[1999, c. 184, §9 (AMD).]

#### **4. Submission of written comments.**

A. During the comment period set forth in the notice, an interested party or member of the public may submit written comments on the proposed application. [1975, c. 500, §1 (NEW).]

B. Such comments shall be maintained in the public files of the bureau, and copies shall be available to the public at cost. [1975, c. 500, §1 (NEW).]

C. The superintendent may, but shall not be compelled to, receive written comments after the close of the written comment period. [1975, c. 500, §1 (NEW).]

[1975, c. 500, §1 (NEW).]

**5. Hearing.** Requests for a hearing and the procedures for notice and conducting the hearings on applications subject to this section shall be governed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

[1977, c. 694, §160 (RPR).]

**6. Decision.** After consideration of all relevant matters presented in the application, in any written comments, in an investigation conducted by the bureau to examine and evaluate facts related to the application to the extent necessary to make an informed decision and at the hearing, if any, the superintendent shall promulgate, in accordance with the Maine Administrative Procedure Act, the final order. Within 5 days of promulgation, notice of the final order setting forth the name of the applicant, the nature of the application and the superintendent's action thereon, together with a statement that copies of the order are available to the public at cost, must be published by the superintendent in those newspapers in which the notice required by subsection 2 was published. Unless the superintendent specifies a later date in the final notice relating thereto, the effective date of the final order is 30 days after its promulgation. The superintendent may waive all or part of the 30-day waiting period following promulgation of the final order, if the superintendent determines that extraordinary or unusual conditions exist that warrant that action. The superintendent shall set forth in writing the circumstances and reasons for waiving all or part of the 30-day waiting period, provided, however, the superintendent shall, within 60 days of the close of the comment period or within 60 days of the conclusion of the hearing if such was held, whichever period is greater, promulgate the final order either approving or disapproving the application.

[ 1997, c. 398, Pt. K, §5 (AMD) .]

### **7. Time periods.**

[ 1977, c. 694, §162 (RP) .]

#### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1975, c. 666, §§9-A,10-12 (AMD). 1977, c. 694, §§159-162 (AMD). 1995, c. 521, §1 (AMD). 1997, c. 398, §§K3-5 (AMD). 1999, c. 184, §9 (AMD).

## **§253. CRITERIA FOR DECISION-MAKING**

The superintendent shall take into account, but is not limited to, the criteria set forth in this section in considering applications filed pursuant to section 252. [1997, c. 398, Pt. K, §6 (AMD) .]

### **1. Public convenience and advantage.**

A. The superintendent shall not approve an application unless he determines that the proposed transaction contributes to the financial strength and success of the financial institution or institutions concerned, and promotes the convenience and advantage of the public. [1975, c. 500, §1 (NEW) .]

B. Public convenience and advantage shall exist if the superintendent determines, based on all relevant evidence, information and materials, that public benefits, such as increased competition or gains in efficiency, outweigh possible adverse effects, such as decreased or unfair competition, undue concentration of resources, conflicts of interest, or unsafe or unsound practices. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**2. Basis for decision.** In addition to the standards set forth in subsection 1, the superintendent shall consider the following factors in determining whether the standard of public convenience and advantage has been met:

A. The character, ability and overall sufficiency of the management, including directors, or organizers, corporators and incorporators of a new financial institution; [1975, c. 500, §1 (NEW) .]

B. The adequacy of capital and financial resources of the institution or institutions concerned; [1975, c. 500, §1 (NEW) .]

C. The competitive abilities and future prospects of the institution or institutions concerned; [1975, c. 500, §1 (NEW).]

D. The convenience and needs of the market area or areas to be served; [1975, c. 500, §1 (NEW).]

E. The competitive effect of the proposed transaction on the price, availability and quality of services in the market area or areas to be served; [1975, c. 500, §1 (NEW).]

F. The likely impact of the proposed transaction on other financial institutions in the market area or areas to be served; and [1975, c. 500, §1 (NEW).]

G. The fairness and equities involved in any merger, consolidation, conversion or acquisition. [1975, c. 500, §1 (NEW).]

[1975, c. 500, §1 (NEW).]

**3. Burden of proof.** In all cases, the burden of proving that public convenience and advantage will be promoted, and that the proposed transaction contributes to the financial strength and success of the institution or institutions concerned, shall rest with the applicant.

[1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K6 (AMD).

### §254. HEARINGS BY SUPERINTENDENT

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §13 (AMD). 1977, c. 694, §163 (RP).

### §255. HEARINGS ON PETITION OF 25 PERSONS

**1. Alleged noncompliance with this Title.** A group of 25 or more persons may join together and petition the superintendent as an interested party to hold a hearing if such group submits to the superintendent a written petition asserting they have reason to believe that a financial institution holding company or financial institution subject to the laws of this State is not complying with the standards of public convenience and advantage set forth in section 253, or that such institution has violated or is violating any provision of this Title or regulation issued pursuant thereto.

[1975, c. 500, §1 (NEW).]

**2. Request for rule-making.** Any person may petition the superintendent to hold a rule-making proceeding for the purpose of promulgating such rules, regulations or amendments as may be proposed in his petition and may petition for a hearing on the proposed rule, regulation or amendment.

[1977, c. 694, §164 (RPR).]

**3. Procedures for requesting hearing.** A petition for a hearing pursuant to this section shall be made in accordance with regulations promulgated by the superintendent.

[1977, c. 694, §164 (RPR).]

**4. Grant or denial of request.** Unless the superintendent shall deem a petition filed pursuant to subsection 1 frivolous or not bona fide, he shall designate the petitioner or petitioners as an interested party and hold a hearing for the purpose set forth in the petition. If the request is a petition for rule-making, within 60 days after receipt of the petition, the superintendent shall either notify the petitioner in writing of its denial and the reasons therefor, or initiate appropriate rule-making proceedings.

[ 1977, c. 694, §164 (RPR) .]

**5. Treatment as interested party.** A group whose petition is granted by the superintendent shall be treated as a single interested party for all purposes of this chapter, unless otherwise determined by the superintendent.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 694, §164 (AMD).

## §256. JUDICIAL REVIEW OF SUPERINTENDENT'S ACTION

Any person or organization affected adversely by a rule, regulation, amendment, order or decision on an application promulgated by the superintendent, or affected adversely by the denial of a request for a hearing, may appeal from that action. Judicial review of any final action of the superintendent shall be in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. [1977, c. 694, §165 (RPR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 694, §165 (RPR).

## Part 3: ORGANIZATION AND STRUCTURE OF FINANCIAL INSTITUTIONS

### Chapter 31: ORGANIZATION AND MANAGEMENT OF INVESTOR-OWNED INSTITUTIONS

#### §311. APPLICABILITY OF CHAPTER

The provisions of this chapter govern the organization and management of financial institutions operating as corporations, limited liability companies, limited partnerships and limited liability partnerships. Unless otherwise indicated in this Title, the provisions of Title 13-C apply to financial institutions operating as corporations; Title 31, chapter 19 applies to financial institutions operating as limited partnerships; Title 31, chapter 21 applies to financial institutions operating as limited liability companies; and Title 31, chapter 15 applies to financial institutions operating as limited liability partnerships. [2009, c. 629, Pt. A, §3 (AFF); 2009, c. 629, Pt. B, §1 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 670, §3 (AMD). 1997, c. 398, §C2 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B7 (COR). 2005, c. 543, §D1 (AMD). 2005, c. 543, §D18 (AFF). 2009, c. 629, Pt. A, §3 (AFF). 2009, c. 629, Pt. B, §1 (AMD).

#### §312. PERMISSION TO ORGANIZE

##### 1. Incorporators.

[ 1997, c. 398, Pt. C, §3 (RP) . ]

**2. Application.** A corporation, limited liability company, limited partnership, limited liability partnership or the organizers of the entity shall apply to the superintendent to seek permission to conduct business as a financial institution. The application must contain the following information:

A. The name by which the financial institution is to be known; [1997, c. 398, Pt. C, §4 (RPR) . ]

B. The purpose for which it is to be formed, including whether a certificate of public convenience and advantage is sought to conduct business as a universal bank, a nondepository trust company, a merchant bank or an uninsured bank; [1997, c. 398, Pt. C, §4 (RPR) . ]

C. The city or town within this State where the institution's principal office is to be located; [1997, c. 398, Pt. C, §4 (RPR) . ]

D. The amount of its capital; [1997, c. 398, Pt. C, §4 (RPR) . ]

E. The names, addresses and occupations of the governing body or organizers of the institution; [1997, c. 398, Pt. C, §4 (RPR) . ]

F. The organizational documents appropriate to the proposed institution's organizational structure; and [1997, c. 398, Pt. C, §4 (RPR) . ]

G. Any additional information, including the reasons why an institution of the type specified in paragraph B is needed in the proposed location, as the superintendent may require by rule. Application for permission to conduct business as a financial institution may not be considered complete unless

accompanied by an application fee as determined by the superintendent, payable to the Treasurer of State, to be credited and used as provided in section 214. In no event may that fee be less than \$1,000 or greater than \$5,000. [1997, c. 398, Pt. C, §4 (RPR).]

[ 1997, c. 398, Pt. C, §4 (RPR) .]

**3. Publication of notice.** After determining that the application required in subsection 2 is complete, the superintendent shall advise the corporation, limited liability company, limited partnership, limited liability partnership or the organizers of the entity to publish, within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice must appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice must specify the names, addresses and occupations or businesses of each of the organizers or members of the governing body, the type of financial institution to be organized, and the name of the institution and its location as set forth in the application for permission to conduct business as a financial institution. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 252, subsection 2.

[ 1997, c. 398, Pt. C, §5 (AMD) .]

#### **4. Permission from superintendent.**

A. [1987, c. 81, §4 (RP).]

B. In determining whether or not a certificate of public convenience and advantage that permits the corporation, limited liability company, limited partnership or limited liability partnership to conduct business as a financial institution should be granted, the superintendent shall make the decision in accordance with the requirements of section 253, pursuant to the procedures set forth in section 252. [1997, c. 398, Pt. C, §6 (AMD).]

C. A grant of a certificate of public convenience and advantage may include such terms and conditions as the superintendent determines necessary. These may include, but are not limited to, conditions regarding the organizational form of the financial institution under this chapter. [1997, c. 398, Pt. C, §6 (AMD).]

[ 1997, c. 398, Pt. C, §6 (AMD) .]

#### **5. Minimum capital required.**

A. The certificate of public convenience and advantage and the superintendent's order granting permission to organize must set forth the minimum amount of paid-in capital that a financial institution must have to begin business. [1997, c. 398, Pt. C, §7 (AMD).]

B. The minimum amount of paid-in capital must be determined by the superintendent, but in no event may it be less than \$100,000. [1997, c. 398, Pt. C, §7 (AMD).]

C. In determining the minimum paid-in capital required, the superintendent may set different requirements for banks, nondepository trust companies, merchant banks and uninsured institutions and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale, the projected volume and type of business to be conducted, the inherent risks in the business to be conducted and the need to protect depositors and other creditors of the institution. [1997, c. 398, Pt. C, §7 (AMD).]

D. All initial and subsequent capital contributions must be in the form of cash, unless otherwise approved by the superintendent. [2005, c. 82, §5 (AMD).]

[ 2005, c. 82, §5 (AMD) .]



**6. Effect of denial.** If the superintendent refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of the refusal.

[ 1987, c. 81, §6 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §§33,34 (AMD). 1987, c. 81, §§1-6 (AMD). 1997, c. 398, §§C3-7 (AMD). 2005, c. 82, §5 (AMD).

### §312-A. EXPEDITED AUTHORITY

Notwithstanding any other provision of law, the superintendent may grant a certificate of public convenience and advantage for a corporation, limited liability company, limited partnership or limited liability partnership to conduct business as a financial institution effective immediately if the superintendent determines that such action is necessary for the protection of depositors or the public. This action may be taken only in conjunction with transactions processed under section 354-A or 355-A. [1997, c. 398, Pt. C, §8 (AMD) .]

#### SECTION HISTORY

1991, c. 34, §1 (NEW). 1997, c. 398, §C8 (AMD).

### §313. ORGANIZATION

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 81, §§7,8 (AMD). 1997, c. 398, §C9 (RP) .

### §313-A. CERTIFICATE TO COMMENCE BUSINESS

**1. Requirements.** A corporation, limited liability company, limited partnership or limited liability partnership that has received a certificate of public convenience and advantage to conduct business as a financial institution may not commence business until the superintendent certifies in writing that the required capital has actually been paid in and that all other terms and conditions contained in the certificate of public convenience and advantage have been satisfied.

[ 1997, c. 398, Pt. C, §10 (NEW) .]

**2. Failure to commence business.** The following provisions apply to an entity authorized to conduct business as a financial institution that fails to commence business.

A. Any corporation, limited liability company, limited partnership or limited liability partnership authorized to conduct business as a financial institution that fails to commence business as a financial institution within one year after receiving a certificate of public convenience and advantage forfeits that certificate and any other certificate to commence business and shall cease all activities. The superintendent shall certify to the Secretary of State that the certificate of public convenience and advantage and any certificate to commence business have been forfeited so that the institution's organizational documents may be terminated by the Secretary of State. [1997, c. 398, Pt. C, §10 (NEW) .]

B. Upon a forfeiture pursuant to paragraph A, the subscribers to the stock of the institution are entitled to a return of any amounts they have paid to the institution as consideration for its shares. The original incorporators shall bear the expenses incurred in the organization. [1997, c. 398, Pt. C, §10 (NEW) .]

C. Upon the failure to commence business within one year and the forfeiture of the certificate of public convenience and advantage and any other certificate to commence business, the corporation, limited liability company, limited partnership or limited liability partnership or the organizers of the entity may not submit another application for permission to conduct business as a financial institution under section 312 for at least one year from the date of this forfeiture. [1997, c. 398, Pt. C, §10 (NEW).]

D. Notwithstanding the time limitation in paragraph A, the superintendent may extend the period in which business must be commenced for a period not to exceed 6 months upon written application by the institution setting forth the reasons for the extension. If an extension is granted by the superintendent, the superintendent shall notify the Secretary of State. [1997, c. 398, Pt. C, §10 (NEW).]

[ 1997, c. 398, Pt. C, §10 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §10 (NEW).

### §314. CORPORATE FINANCE

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §11 (RP).

### §314-A. ORGANIZATIONAL DOCUMENTS

**1. Financial institutions organized as corporations.** The following provisions apply to financial institutions organized as corporations.

A. The articles of incorporation must contain the following statement:

"The purpose of this corporation is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B."

Articles of incorporation or amendments to articles of incorporation must have the prior written approval of the superintendent. [2003, c. 344, Pt. D, §2 (RPR).]

B. The original bylaws of the financial institution must be approved by the superintendent in writing. Amendments to bylaws must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [1997, c. 398, Pt. C, §12 (NEW).]

[ 2003, c. 344, Pt. D, §2 (AMD) .]

**2. Financial institutions organized as limited liability companies.** The following provisions apply to financial institutions organized as limited liability companies.

A. The articles of organization of a limited liability company must contain the following statement: "The purpose of this limited liability company is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Articles of organization or amendments to articles of organization must have the prior written approval of the superintendent. [1997, c. 398, Pt. C, §12 (NEW).]

B. The original operating agreement of the financial institution must be approved by the superintendent in writing. Amendments to the operating agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [1997, c. 398, Pt. C, §12 (NEW).]

[ 1997, c. 398, Pt. C, §12 (NEW) .]

**3. Financial institutions organized as limited partnerships.** The following provisions apply to financial institutions organized as limited partnerships.

A. A financial institution organized as a limited partnership shall register with the Secretary of State. The certificate of limited partnership must contain the following statement: "The purpose of this limited partnership is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Certificates of limited partnership or amendments to certificates of limited partnership must have the prior written approval of the superintendent. [1997, c. 398, Pt. C, §12 (NEW).]

B. A financial institution organized as a limited partnership shall operate pursuant to a written partnership agreement. The original partnership agreement of the financial institution must be approved by the superintendent in writing. Amendments to a partnership agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [1997, c. 398, Pt. C, §12 (NEW).]

[ 1997, c. 398, Pt. C, §12 (NEW) .]

**4. Financial institutions organized as limited liability partnerships.** The following provisions apply to financial institutions organized as limited liability partnerships.

A. A financial institution organized as a limited liability partnership shall register with the Secretary of State. The certificate of limited liability partnership must contain the following statement: "The purpose of this limited liability partnership is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Certificates of limited liability partnership or amendments to certificates of limited liability partnership must have the prior written approval of the superintendent. [1997, c. 398, Pt. C, §12 (NEW).]

B. A financial institution organized as a limited liability partnership shall operate pursuant to a written partnership agreement. The original partnership agreement of the financial institution must be approved by the superintendent in writing. Amendments to a partnership agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [1997, c. 398, Pt. C, §12 (NEW).]

[ 1997, c. 398, Pt. C, §12 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §C12 (NEW). 2003, c. 344, §D2 (AMD).

### §315. STOCKHODERS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §35 (AMD). 1997, c. 398, §C13 (RP).

### §316. BOARD OF DIRECTORS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §36 (AMD). 1983, c. 63, §1 (AMD). 1983, c. 480, §§B9,211 (AMD). 1985, c. 642, §§1,2 (AMD). 1987, c. 81, §9 (AMD). 1993, c. 257, §1 (AMD). 1997, c. 182, §§A2,3 (AMD). 1997, c. 398, §C14 (RP).

## §316-A. GOVERNING BODY

Except as provided in this section, the management and operations of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19; Title 31, chapter 21; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of the governing body. [2009, c. 629, Pt. A, §3 (AFF); 2009, c. 629, Pt. B, §2 (AMD).]

**1. Number of directors.** The governing body of a financial institution must consist of at least 5 directors, except that the superintendent may approve fewer directors for good cause shown.

[ 1999, c. 218, §10 (AMD) .]

**2. Executive committee.** The governing body of a financial institution organized as a corporation may appoint by majority vote of the governing body an executive committee of no less than 5 members and may delegate to the committee the powers of the governing body in regard to the ordinary operations of the business of the institution. The superintendent may approve fewer members for good cause shown.

[ 1997, c. 398, Pt. C, §15 (NEW) .]

**3. Frequency of meetings.** A governing body of a financial institution organized as a corporation that has appointed an executive committee shall meet at least 6 times a year, including once each quarter, if the executive committee meets during the months in which the governing body does not meet. Minutes of executive committee meetings must be ratified by the governing body. The governing body of a financial institution organized as a corporation that has not appointed an executive committee or the governing body of any other financial institution shall meet at least monthly. The superintendent may approve less frequent meetings for good cause shown.

[ 1997, c. 398, Pt. C, §15 (NEW) .]

### SECTION HISTORY

1997, c. 398, §C15 (NEW). 1999, c. 218, §10 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B8 (COR). 2005, c. 543, §D2 (AMD). 2005, c. 543, §D18 (AFF). 2009, c. 629, Pt. A, §3 (AFF). 2009, c. 629, Pt. B, §2 (AMD).

## §317. OFFICERS AND EMPLOYEES

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 170, §1 (AMD). 1979, c. 429, §6 (AMD). 1979, c. 663, §37 (AMD). 1981, c. 501, §30 (AMD). 1993, c. 257, §2 (AMD). 1997, c. 398, §C16 (RP).

## §317-A. OFFICERS

Except as provided in this section, the powers and duties of officers of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19; Title 31, chapter 21; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of officers. [2009, c. 629, Pt. A, §3 (AFF); 2009, c. 629, Pt. B, §3 (AMD).]

**1. Appointment.** The governing body of a financial institution shall appoint from its members or otherwise one or more officers to manage the day-to-day affairs of the institution. One of these officers must be designated the chief executive officer. The governing body shall report the name of the designated chief executive officer to the superintendent within 10 days of designation.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

**2. Bonds.** The governing body of a financial institution shall require security for the fidelity and faithful performance of duties by its officers, employees and agents in an amount that the governing body considers necessary or that the superintendent requires. This security must consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase this amount from time to time as circumstances may require.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §C17 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B9 (COR). 2005, c. 543, §D3 (AMD). 2005, c. 543, §D18 (AFF). 2009, c. 629, Pt. A, §3 (AFF). 2009, c. 629, Pt. B, §3 (AMD).

### §318. DIVIDENDS, DISTRIBUTIONS AND WITHDRAWALS

**1. Limitation.** A financial institution organized pursuant to this chapter may not authorize dividends, distributions or withdrawals that reduce capital below the higher of the amount required under the certificate of public convenience and advantage or section 412-A without the prior approval of the superintendent.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

**2. Form.** Dividends, distributions and withdrawals must be in cash or in additional shares, members' interests or partnership interests unless otherwise authorized by the superintendent.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §C17 (NEW).

### §319. SPECIAL PROVISIONS FOR SUBSIDIARY BANKS OF MUTUAL HOLDING COMPANIES

**1. Restriction.** A subsidiary bank established pursuant to a reorganization under chapter 105 must be organized as a corporation.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

**2. Board of directors.** With respect to a subsidiary bank established pursuant to a reorganization under chapter 105 from and after the time that subsidiary bank includes stockholders other than the mutual holding company, the articles of incorporation of the subsidiary bank must be amended to provide for proportionate representation of the minority stockholders on the board of directors of the subsidiary bank based on the percentage of common stock owned by the minority stockholders in the aggregate relative to the total amount of common stock then issued and outstanding, except that the minority stockholder representatives on the board of directors of the subsidiary bank may not be fewer than 2. A director or officer of a mutual holding company or subsidiary bank or any affiliate of that company or institution is prohibited from serving as a designated minority stockholder representative on the board of directors of the subsidiary bank. Shares of stock of the subsidiary bank owned directly or indirectly by an individual director or officer of the mutual

holding company are deemed to be owned by the mutual holding company for purposes of determining proportionate representation of minority stockholders on the board of directors of the subsidiary bank. Representatives of the mutual holding company that serve on the board of directors of the subsidiary bank must be selected in accordance with chapter 105.

[ 1997, c. 398, Pt. C, §17 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §C17 (NEW).

## Chapter 32: ORGANIZATION AND MANAGEMENT OF MUTUAL AND COOPERATIVE FINANCIAL INSTITUTIONS

### §321. APPLICABILITY OF CHAPTER

The provisions of this chapter govern the organization and management of financial institutions operating as mutual or cooperative financial institutions. [1997, c. 398, Pt. D, §2 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §D2 (AMD).

### §322. PERMISSION TO ORGANIZE

**1. Organizers.** Any number of persons, but not less than 20, all of whom must reside in or reside proximate to the geographic area to be served by the institutions, may agree in writing to associate themselves for the purpose of forming a mutual or cooperative financial institution pursuant to this chapter.

[ 1997, c. 398, Pt. D, §3 (AMD) .]

**2. Application to organize.** The organizers set forth in subsection 1 shall file with the superintendent an application for permission to organize a mutual or cooperative financial institution, which application must contain the following:

- A. The name by which the institution will be known; [1997, c. 398, Pt. D, §3 (AMD).]
- B. The purpose for which it is to be formed, including whether the organizers seek a certificate of public convenience and advantage to conduct business as a financial institution. The organizers shall indicate in the application whether the institution will be organized as a mutual or cooperative financial institution; [1997, c. 398, Pt. D, §3 (AMD).]
- C. The city or town within this State where the institution's principal office is to be located; [1975, c. 500, §1 (NEW).]
- D. The proposed minimum amount of initial capital contributions to be deposited; [1975, c. 500, §1 (NEW).]
- E. The names, addresses and occupations of the directors of the institution who are to serve until the initial meeting of the members or corporators or until their successors are elected and qualified, and the names, addresses and occupations of the directors who will be voted on by the members or corporators at the initial meeting; [1997, c. 398, Pt. D, §3 (AMD).]
- F. A statement setting forth the name, address and occupation of each organizer, together with the amount of initial capital that such organizer shall deposit, subscribed to by said organizer; and [1997, c. 398, Pt. D, §3 (AMD).]

G. Such additional information, including the reasons why an institution of the type specified in paragraph B is needed in the proposed location, as the superintendent may require. [1997, c. 398, Pt. D, §3 (AMD).]

An application for permission to organize a mutual or cooperative financial institution may not be considered complete unless accompanied by an application fee of not more than \$5,000, payable to the Treasurer of State, to be credited and used as provided in section 214.

[ 1997, c. 398, Pt. D, §3 (AMD) .]

**3. Publication of notice.** After determining that the application required in subsection 2 is complete, the superintendent shall advise the organizers to publish within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall specify the names, addresses and occupations of the organizers and directors, the type of institution to be organized, and the name of the institution and its location, as set forth in the application for permission to organize. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 252, subsection 2.

[ 1975, c. 500, §1 (NEW) .]

**4. Permission from superintendent.**

A. [1997, c. 398, Pt. D, §4 (RP).]

B. In determining whether public convenience and advantage will be promoted by granting permission to organize the type of institution requested, the superintendent shall make his decision in accordance with section 253 pursuant to the procedures set forth in section 252. [1975, c. 500, §1 (NEW) .]

C. A grant of a certificate of public convenience and advantage and an order granting permission to organize may include such terms and conditions as the superintendent considers necessary, including, but not limited to, an increase in the amount of minimum capital deposits, pursuant to subsection 5. [1997, c. 398, Pt. D, §5 (AMD).]

[ 1997, c. 398, Pt. D, §§4, 5 (AMD) .]

**5. Minimum initial capital contribution deposits.**

A. The certificate of public convenience and advantage and the superintendent's order granting permission to organize must set forth the minimum amount of capital deposits that the mutual or cooperative financial institution must have to begin business. [1997, c. 398, Pt. D, §6 (AMD) .]

B. The minimum amount of capital deposits shall be determined by the superintendent, but in no event shall it be less than \$100,000. [1975, c. 500, §1 (NEW) .]

C. In determining the minimum amount of capital deposits, the superintendent may set different requirements for financial institutions and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale and the need to protect depositors and other creditors of the institution. [1997, c. 398, Pt. D, §6 (AMD) .]

[ 1997, c. 398, Pt. D, §6 (AMD) .]

**6. Effect of denial.** If the superintendent denies permission to organize or refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of such denial.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §D3 (AMD). 1997, c. 398, §D4 (AMD). 1997, c. 398, §D5 (AMD). 1997, c. 398, §D6 (AMD).

## §323. ORGANIZATION

Upon receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 322, the organizers shall comply with the following requirements: [1975, c. 500, §1 (NEW) .]

**1. Franchise during organization.** The organizers set forth in the application for permission to organize, and who subsequently receive permission from the superintendent, shall hold the institution's franchise until such time as the requirements of this section are met or the superintendent determines that said requirements have not been complied with.

[ 1975, c. 500, §1 (NEW) .]

### **2. First meeting: adoption of articles and bylaws.**

A. Within 30 days after receipt of a certificate of public convenience and advantage and an order granting permission to organize pursuant to section 322, the first meeting of the organizers of the financial institution must be called by a notice signed by that organizer who was designated in the application for that purpose, or by a majority of the organizers. Such notice must state the time, place and purposes of the meeting. A copy of the notice must be given to each organizer at least 3 days before the date appointed for the meeting, or left at each organizer's residence or usual place of business, or deposited in the post office and addressed to such an organizer at that organizer's residence or usual place of business, and another copy thereof, together with an affidavit of one of the organizers that the notice has been duly served, must be recorded with the records of the institution. If all the organizers, in writing indorsed upon the application to organize, waive such notice and fix the time and place of the meeting, no notice is required. [1997, c. 398, Pt. D, §7 (AMD) .]

B. At the first meeting and thereafter, the organizers of a mutual financial institution are known as the "corporators" and the organizers of a cooperative financial institution are known as the "incorporators." [1997, c. 398, Pt. D, §7 (AMD) .]

C. At such meeting or at any adjournment thereof, the corporators or incorporators shall by ballot select a temporary clerk, adopt the articles of incorporation and bylaws of the institution and, in such manner as the bylaws may determine, elect directors, a president, a clerk and such other officers as the bylaws may prescribe. All persons so elected shall qualify for their offices as provided in sections 326 and 327. [1975, c. 500, §1 (NEW) .]

D. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification. [1975, c. 500, §1 (NEW) .]

E. Within 10 days after adoption of the articles of incorporation and bylaws, the clerk shall file with the superintendent copies thereof; and, within 15 days after receipt, the superintendent shall, after examining such articles and bylaws for conformance with the requirements of this Title, approve or disapprove of such articles and bylaws. [1975, c. 500, §1 (NEW) .]

[ 1997, c. 398, Pt. D, §7 (AMD) .]



**3. Submission to Secretary of State.** Following the meeting required under subsection 2, the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the filing requirements of Title 13-C. If such filing requirements are met and the superintendent has approved said articles, the Secretary of State shall file the articles of incorporation pursuant to Title 13-C, chapter 1, subchapter 2. The filing of the articles of incorporation by the Secretary of State does not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

[ 2003, c. 344, Pt. D, §3 (AMD) .]

**4. Payment of capital deposits.**

A. A financial institution organized under this chapter shall not commence business until the minimum capital deposits required in its permission to organize have been deposited to the credit of the financial institution in a depository designated by the directors; [1975, c. 500, §1 (NEW) .]

B. At such time as the institution has received to its credit the minimum capital deposits required in section 322, subsection 5, a complete list of the capital depositors, with the name, address, occupation and the amount of capital deposited by each shall be filed with the superintendent, which list shall be verified by the president and clerk of the institution. Such deposits shall be handled by the institution in accordance with section 324. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**5. Certificate to commence business.**

A. Upon receipt of the statement required in subsection 4, the superintendent shall cause an examination to be made to determine if the minimum capital deposits have been credited to the account of the institution as he may determine and that all requirements of this section and other provisions of law have been complied with. [1975, c. 500, §1 (NEW) .]

B. Upon completion of his examination, and if the requirements of paragraph A are met, the superintendent shall issue a certificate authorizing the financial institution to begin transacting the business of a financial institution of the type as set forth in its articles of incorporation. Such certificate shall be conclusive of the facts stated therein and it shall be unlawful for any such mutual financial institution to begin transacting business until such a certificate has been granted. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**6. Failure to commence business.**

A. Any mutual or cooperative financial institution that fails to commence business as a financial institution within one year after receiving a certificate of public convenience and advantage forfeits that certificate and any other certificate to commence business and shall cease all activities. The superintendent shall certify to the Secretary of State that the certificate of public convenience and advantage and any certificate to commence business have been forfeited so that the institution's articles of incorporation may be terminated by the Secretary of State. [1997, c. 398, Pt. D, §8 (AMD) .]

B. Upon any such forfeiture, the contributors of initial capital deposits of such institution shall be entitled to return of any amounts which they have paid to the institution and all expenses incurred in the organization shall be borne by the original organizers who were named in the application for permission to organize. [1975, c. 500, §1 (NEW) .]

C. Upon failure to commence business within one year and forfeiture of permission to organize and any certificate to commence business so obtained, the organizers may not submit another application for permission to organize a financial institution under sections 312 or 322 for at least one year from the date of such forfeiture. [1975, c. 500, §1 (NEW).]

D. Notwithstanding the time limitation in paragraph A, the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months upon written application by the institution setting forth the reasons for such extension. If an extension is granted by the superintendent, the Secretary of State shall be so notified by the superintendent. [1975, c. 500, §1 (NEW).]

[ 1997, c. 398, Pt. D, §8 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §D7 (AMD). 1997, c. 398, §D8 (AMD). 2003, c. 344, §D3 (AMD).

## §324. CORPORATE FINANCE

### 1. Initial capital deposits.

A. The initial capital deposits required under section 323, subsection 4, for commencing business shall be paid into an account of the institution known as the "capital reserve" account. [1975, c. 500, §1 (NEW).]

B. The institution shall record on its books the amount which each capital depositor has contributed to such capital reserve and such amounts shall be evidenced by a certificate issued to the contributor thereof. [1975, c. 500, §1 (NEW).]

C. Dividends or interest may be paid upon the amounts standing to the credit of each owner of a proportionate interest in the capital reserve, in accordance with the terms of the deposit agreement, but in no event shall such dividends or interest be in excess of the maximum rate paid on shares or accounts of the institution for the same period. [1975, c. 500, §1 (NEW).]

D. The capital reserve established pursuant to this section shall be used as a guarantee against losses, contingencies and impairments of capital, and all losses and expenses not otherwise absorbed shall be charged against it until such time as the conditions in subsection 2 are met; provided that the amount credited to each contributor shall be reduced only by its proportionate share of such losses or expenses. [1975, c. 500, §1 (NEW).]

E. The capital reserve shall be subordinate to all other deposits or share accounts of the institution. [1975, c. 500, §1 (NEW).]

F. The capital contribution standing to the credit of each capital depositor in the capital reserve of the institution shall be transferable, together with any interest or dividends credited thereon, subject to the conditions and restrictions of this section. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

**2. Return of initial capital deposit.** The initial capital deposits, together with any dividends or interest credited thereon, may be returned, pro rata, to the contributors, or their heirs, executors, administrators or assigns, subject to the following conditions and limitations:

A. Prior to return of all or part of the initial capital reserve, the institution shall obtain the superintendent's approval for such return; [1975, c. 500, §1 (NEW).]

B. A return of all or part of the capital reserve may not reduce the institution's capital below the greater of the total initial capital contributions or the minimum amount prescribed by the superintendent in accordance with section 412-A; [1997, c. 398, Pt. D, §9 (AMD).]

C. Upon release and return, the contributor's proportionate share of the amount to be returned shall be credited in his name to a share account or deposit in such institution, and the contributor shall then be entitled to all rights and privileges, and shall be subject to all duties and liabilities, connected with such share account or deposit; [1975, c. 500, §1 (NEW).]

D. In the event of the liquidation of an institution before such contributions have been repaid in full, any portion of such contributions not required for the repayment of the expenses and the payment of creditors and other depositors in full, pursuant to section 365, may be repaid pro rata to the initial capital depositors. [1975, c. 500, §1 (NEW).]

[ 1997, c. 398, Pt. D, §9 (AMD) .]

**3. Capital debentures as capital reserve.** Subject to prior approval of the superintendent, a financial institution may issue capital notes or debentures, the proceeds from the sale of which may be used in lieu of capital deposits to establish part of the capital reserve required in subsection 1, provided that:

A. Such capital notes or debentures are issued pursuant to section 413; [1975, c. 500, §1 (NEW) .]

B. Such notes or debentures are subject to conditions governing the repayment of principal and interest which are comparable to the requirements governing return of initial capital deposits as set forth in subsection 2; and [1975, c. 500, §1 (NEW) .]

C. Repayment of the principal amount of such capital notes or debentures issued pursuant to this section shall have priority over the return of any initial capital deposits in the capital reserve account pursuant to subsection 2. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §D9 (AMD).

## §325. CORPORATORS AND MEMBERS

### 1. Corporators of mutual financial institutions.

A. The persons named in the articles of incorporation constitute the original board of corporators of a mutual financial institution. Membership on this board continues until terminated pursuant to the articles of incorporation or bylaws or by death, resignation or disqualification as provided in this section. [2009, c. 1, §10 (COR).]

B. [2009, c. 19, §2 (RP).]

C. All corporators must be residents of the geographic area that the financial institution serves or an area proximate to this geographic area. A person may not continue as a corporator after ceasing to be a resident of the financial institution's geographic area or an area proximate to this geographic area. [1997, c. 398, Pt. D, §10 (AMD).]

D. Any corporator failing to attend the annual meeting of the board of corporators for 2 successive years ceases to be a member of the board unless reelected by a vote of the remaining corporators. [1997, c. 398, Pt. D, §10 (AMD).]

E. The number of corporators may be fixed or altered by the bylaws of the financial institution, and vacancies may be filled by election at any annual meeting. [1997, c. 398, Pt. D, §10 (AMD) .]

F. The superintendent has the power to comment upon the sociological composition, as defined in section 131, of the board of corporators of any mutual or cooperative financial institution. This comment may be made in the form and manner the superintendent considers appropriate. [1997, c. 398, Pt. D, §10 (AMD).]

[ 2009, c. 1, §10 (COR) .]

## **2. Members of a cooperative financial institution; qualifications and voting rights.**

A. The members of a cooperative financial institution organized pursuant to this chapter must be those in whose names accounts are established and persons borrowing from or assuming or obligated upon a loan held by such institution or purchasing property and assuming the secured loan held by such institution. [1997, c. 398, Pt. D, §11 (AMD).]

B. A single membership in a cooperative financial institution may be held by 2 or more persons, and a joint and survivorship relationship and successor relationship, whether investors or borrowers, constitutes a single membership. [1997, c. 398, Pt. D, §11 (AMD).]

C. Each member 18 years of age or over is entitled to one vote at any meeting of the cooperative financial institution, regardless of the number of shares or accounts standing in that member's name, provided that only one vote is allowed on an account held by 2 or more persons. A member may not vote by proxy at any meeting, unless otherwise provided in this Title. The bylaws may prohibit voting by persons who have become members within 6 months of the date when the vote is cast. When accounts or shares are pledged, the pledgor may vote the accounts or shares so pledged. [1997, c. 398, Pt. D, §11 (AMD).]

D. Membership terminates when the amount of a member's shares or accounts has been paid in full to that member, or when the transfer of membership to other persons has been recorded on the books of the financial institution, or when that member's status as a borrower from the institution terminates. [1997, c. 398, Pt. D, §11 (AMD).]

[ 1997, c. 398, Pt. D, §11 (AMD) .]

## **3. Powers and duties of corporators and members.**

A. Corporators or members shall hold regular annual meetings, at a time fixed in the bylaws of the institution, for the purpose of electing directors of the institution and for the transaction of any other business which may properly be brought before such meeting. [1975, c. 500, §1 (NEW).]

B. Special meetings of the corporators or members may be called at any time by the president of the institution, or in any other manner provided for in the bylaws. [1975, c. 500, §1 (NEW).]

C. Notice of the annual meeting or any special meeting shall be given by public advertisement in a newspaper or newspapers of general circulation in the county or counties where each office of the institution is located, or in such other newspapers as the superintendent may designate; provided that corporators shall also be sent notice by mail at their last known address. The notice shall be published on at least 2 different days and in such manner as to be reasonably conspicuous. The last publication of notice shall be at least 7 days prior to such annual or special meeting. Notice of any special meeting shall state the purpose for which such meeting is called. [1975, c. 666, §15 (RPR).]

D. The bylaws must prescribe the number of corporators or members that constitute a quorum at any annual or special meeting. The bylaws may also provide for voting by proxy. [1997, c. 398, Pt. D, §12 (AMD).]

E. Meetings of the corporators or members shall be held at the institution's principal office, or at such other place in the area of this State served by the institution as the notice shall designate. [1975, c. 500, §1 (NEW).]

[ 1997, c. 398, Pt. D, §12 (AMD) .]

**4. Articles of incorporation.** The incorporators or members shall have the right to amend the institution's articles of incorporation in any manner not inconsistent with this Title; provided that such amendments are submitted to the superintendent for his written approval prior to their taking effect.

[ 1975, c. 500, §1 (NEW) .]

**5. Bylaws.** Bylaws may be amended and added to by the incorporators or members or directors of the institution except to the extent limited by the articles of incorporation or unless such power has been reserved by the articles of incorporation or granted by the incorporators to the board of directors. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall otherwise indicate to the institution.

[ 1977, c. 155, §1 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§14,15 (AMD). 1977, c. 155, §1 (AMD). 1997, c. 398, §§D10-12 (AMD). RR 2009, c. 1, §10 (COR). 2009, c. 19, §§1, 2 (AMD).

## §326. BOARD OF DIRECTORS

Except as provided in this section and section 327, the management and operations of a financial institution organized under this chapter must be pursuant to Title 13-C, chapter 8. [2003, c. 528, §1 (AMD) .]

### 1. Directors: number, election, qualifications and term.

A. The number of directors on the board of a mutual financial institution may not be less than 5.

[2003, c. 528, §2 (AMD) .]

B. The initial board of directors must be elected at the first meeting of the incorporators or the incorporators as provided for in section 323, and the board of directors must be elected by a vote of the incorporators or members at each annual meeting thereafter; except that the articles of incorporation or bylaws may provide for groups of directors in accordance with Title 13-C, section 806. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §11 (COR) .]

C. Vacancies on the board occurring during the year may be filled by the board until the next annual meeting of the incorporators or members, who shall elect a director at such time to fill such position for the remainder of the term. Any vacancy that causes the number of directors to fall below the minimum required in paragraph A or in the institution's bylaws or articles of incorporation must be filled immediately. [2003, c. 528, §3 (AMD) .]

D. [1997, c. 398, Pt. D, §14 (RP) .]

E. The compensation of directors, which may include provision for payment of medical, surgical and hospital expenses due to accident or illness in the same manner as provided for officers and employees, may be fixed by the incorporators or members at any legal meeting thereof, or, subject to the written approval of the superintendent, such may be fixed by the board of directors. [1975, c. 500, §1 (NEW) .]

F. [1977, c. 379, (RP) .]

G. The superintendent has the power to comment upon the sociological composition, as defined in section 131, of the board of directors of any mutual or cooperative financial institution. This comment may be made in the form and manner the superintendent considers appropriate. [1997, c. 398, Pt. D, §15 (AMD) .]

[ 2003, c. 528, §§2,3 (AMD) .]

**2. Meetings of the directors.**

A. The directors shall hold at least 6 meetings each year, at least quarterly, at a time fixed in the bylaws. In any month in which the directors do not meet, the executive committee shall meet and a record of the meeting of the executive committee shall be ratified at the next board meeting. [1983, c. 63, §2 (RPR).]

B. A quorum at any meeting shall consist of not less than a majority of the board, but less than a quorum shall have power to adjourn from time to time until the next duly called meeting. [1975, c. 500, §1 (NEW).]

C. Full and complete records of all meetings of the board shall be kept and maintained. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

**3. Powers and duties of the board.**

A. The board of directors may exercise any and all powers of an institution not expressly reserved to the incorporators or members by this Title or by the institution's articles or bylaws. [1975, c. 500, §1 (NEW).]

B. The directors shall see that all funds of the institution are invested only in accordance with the sections of this Title governing the type of institutions of which they are directors. [1975, c. 500, §1 (NEW).]

C. The board of directors may, in its discretion and so far as is consistent with its duties, appoint an executive committee from its members, such committee to conduct the business of the institution between meetings of the board; provided that all transactions of such executive committee shall be reported to the directors at their next meeting and incorporated into the records of such meetings. [1975, c. 500, §1 (NEW).]

D. The board may employ, or authorize any officer to employ, any persons necessary to conduct the business of the institution. [1975, c. 500, §1 (NEW).]

E. Bylaws not inconsistent with this Title governing the management and operations of the institution may be adopted by the board of directors consistent with the provisions of section 325, subsection 5; provided that a copy of such and any amendments thereto shall be submitted by the institution to the superintendent, and shall become effective 10 days after such submission unless the superintendent shall indicate otherwise to the institution. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1975, c. 666, §§15-A,16 (AMD). 1977, c. 379, (AMD). 1983, c. 63, §2 (AMD). 1997, c. 398, §§D13-15 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §§B10,11 (COR). 2003, c. 528, §§1-3 (AMD).

**§327. OFFICERS AND EMPLOYEES**

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter must be pursuant to Title 13-C. [2003, c. 344, Pt. D, §4 (AMD).]

**1. Election.** Unless another manner for election is provided in the bylaws, the board of directors shall elect annually from its members a chair and, from its members or otherwise, a president, one or more vice presidents, a clerk or secretary, a treasurer and such other officers as it may consider advisable. Officers so

elected serve for a term of not more than one year, but continue in office until their successors are elected and qualified. If any office becomes vacant during the year, the board may immediately fill the same for the period remaining until the next annual meeting for election of officers.

[ 1997, c. 398, Pt. D, §16 (AMD) . ]

**2. Compensation.** The compensation of officers shall be fixed by the board of directors.

[ 1975, c. 500, §1 (NEW) . ]

**3. Powers of officers.** Each officer shall have such powers as the bylaws may provide or as may be delegated by the board. In addition, an officer may exercise the powers set forth below:

A. The chairman of the board shall preside at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws. [1975, c. 500, §1 (NEW) . ]

B. The president shall preside, in the absence of a chairman of the board of directors, at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws. [1975, c. 500, §1 (NEW) . ]

C. The clerk or secretary shall exercise the following powers.

(1) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the corporators, members or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer, or in the treasurer's absence another officer of the institution designated by the directors, must be ex officio clerk of the institution and of the directors.

(2) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors of the institution. The clerk shall return a copy of the list of officers and directors to the superintendent within that 30 days, which must be kept on file in the superintendent's office for public inspection.

(3) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with Title 13-C. [2003, c. 344, Pt. D, §5 (AMD) . ]

D. All conveyances, leases, assignments, releases, transfers of stock certificates and registered bonds, and all other written instruments authorized or required by law or vote of the directors, may be executed by the president or treasurer, or by any other official authorized and empowered by the bylaws of the institution or duly recorded vote of the directors. [1975, c. 500, §1 (NEW) . ]

[ 2003, c. 344, Pt. D, §5 (AMD) . ]

**4. Oath of office.**

[ 1997, c. 398, Pt. D, §17 (RP) . ]

**5. Bonds.** The directors shall require security for the fidelity and faithful performance of duties by its officers, employees and agents, in such amount as the directors shall deem necessary or as the superintendent may require. Such security shall consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase such amount from time to time as circumstances may require. The expense of such bond shall be assumed by the institution.

[ 1975, c. 500, §1 (NEW) . ]

**6. Removal of officers or employees.**

[ 1979, c. 170, §2 (RP) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 170, §2 (AMD). 1979, c. 663, §38 (AMD). 1981, c. 501, §31 (AMD). 1997, c. 398, §§D16,17 (AMD). 2003, c. 344, §§D4,5 (AMD).

**Chapter 33: BRANCHES****§331. APPLICABILITY OF CHAPTER; STATEWIDE BRANCHING**

**1. Applicability.** The provisions of this chapter govern the establishment of a branch office or agency by a financial institution subject to the laws of this State.

[ 1997, c. 398, Pt. E, §1 (AMD) .]

**2. Statewide branching.** Subject to the conditions and limitations contained in this chapter, a financial institution may establish a branch anywhere within this State, except that a financial institution may not establish a branch within 1.5 miles of any location of an affiliate where the affiliate engages in commercial activity and may not conduct any commercial activity at any branch.

[ 2007, c. 69, §2 (AMD) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §E1 (AMD). 2007, c. 69, §2 (AMD).

**§332. BRANCH OFFICES**

**1. Approval of governing body.** All or any part of the business of a financial institution authorized pursuant to the provisions of this Title may be transacted in a branch or agency office. The financial institution's governing body is responsible for determining the scope of operations of each branch, including the services to be provided and the days and hours of operation. Customers must be provided reasonable advance notice of reduction in services or hours of operation.

[ 1997, c. 398, Pt. E, §1 (AMD) .]

**2. Superintendent's approval.**

[ 1999, c. 218, §11 (RP) .]

**2-A. Superintendent's approval.** A financial institution may not establish a branch or agency office without the prior approval of the superintendent.

A. For a branch being established in the State by a financial institution, approval must be obtained pursuant to section 336, except that a financial institution that meets the minimum standards set forth in section 412-A or 832 and any rules adopted pursuant to these sections and is not under an enforcement action that requires the superintendent's prior approval of a branch establishment may establish a branch in this State without the prior approval of the superintendent. If the superintendent's approval is not required, the financial institution shall inform the superintendent at least 10 days prior to the proposed action. This notice must be accompanied by a recording fee not to exceed \$100. [1999, c. 218, §12 (NEW) .]



B. For a branch being established by a financial institution outside of this State, but not in a foreign country, approval must be obtained pursuant to chapter 37 and section 336. [1999, c. 218, §12 (NEW) .]

C. For a branch being established by a financial institution outside of this State and in a foreign country, approval must be obtained pursuant to section 336. [1999, c. 218, §12 (NEW) .]

[ 1999, c. 218, §12 (NEW) .]

**3. Bonded carrier.** The use of a financial institution employee or a bonded carrier to transport deposits to a financial institution, whether paid for by the customer or the financial institution, may not be construed as the establishment or operation of a branch. In the event a bonded carrier is used to transport deposits to a financial institution, the messenger must be considered the agent of the customer rather than of the financial institution. Deposits collected under this arrangement are not considered to have been received by the financial institution until they are actually delivered to a teller at the financial institution's premises.

[ 1997, c. 398, Pt. E, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §E1 (AMD). 1999, c. 218, §§11,12 (AMD) .

### **§333. LIMITED-TIME, IN-SCHOOL OR SEASONAL BRANCH OFFICES** **(REPEALED)**

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1993, c. 492, §3 (AMD). 1997, c. 398, §E2 (RP) .

### **§334. SATELLITE FACILITIES**

**1. Superintendent's approval.** A financial institution or a service corporation wholly owned by one or more financial institutions may establish, relocate or close a satellite or off-premise facility, as defined in section 131, without the prior approval of or notification to the superintendent.

[ 1997, c. 398, Pt. E, §3 (AMD) .]

#### **2. Manned or unmanned facility permitted.**

[ 1997, c. 398, Pt. E, §3 (RP) .]

#### **3. Ownership.**

[ 1997, c. 398, Pt. E, §3 (RP) .]

**4. Use of established facilities by additional institutions.** A satellite facility owned or operated by a financial institution must be made available for use by other financial institutions authorized to do business in this State, unless the satellite facility is located on the institution's premises. All financial institutions using the satellite facility must have equal access to the satellite facility, except that a financial institution owning an off-premise facility may restrict the acceptance of deposits at the off-premise facility to its customers only or to customers of financial institutions with which it has an agency agreement pursuant to section 418. For the purposes of this subsection, an off-premise facility is a satellite facility that is not located physically on the premises of a main office or branch or one that is not an extension of or ancillary to an existing main

office or branch. When a satellite facility is shared, the identification and promotion of that satellite facility must include the name or logo of the network system and may include the name of the sponsoring financial institution.

- A. [1991, c. 386, §2 (RP).]
- B. [1991, c. 386, §2 (RP).]
- C. [1991, c. 386, §2 (RP).]
- D. [1991, c. 386, §2 (RP).]
- E. [1991, c. 386, §2 (RP).]

[ 1997, c. 398, Pt. E, §3 (AMD) .]

**5. Location of facilities on premises.** Nothing may preclude a financial institution from locating an electronic terminal or satellite facility on the premises of its main office or of a branch office for its customers' convenience. At the discretion of that financial institution, customers of other financial institutions may have access to those on-premise facilities.

An on-premise facility is a facility that is located physically on the premises of a main office or branch or one that is an extension of or ancillary to an existing main office or branch. For purposes of this section, a facility is considered ancillary to or an extension of an existing office if it is situated on the parcel of land on which the branch or main office is located and not across a public way, or within 500 feet, whichever is greater, and not operational from within the confines of another establishment.

[ 1997, c. 398, Pt. E, §3 (AMD) .]

#### **6. Notification required.**

[ 1997, c. 398, Pt. E, §3 (RP) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 352, §§3,4 (AMD). 1983, c. 614, §1 (AMD). 1985, c. 647, §4 (AMD). 1991, c. 386, §§1-4 (AMD). 1993, c. 139, §1 (AMD). 1997, c. 22, §§2-5 (AMD). 1997, c. 398, §E3 (AMD).

### **§335. CHANGE OF OFFICE LOCATION; CLOSING OF AN OFFICE**

**1. Relocation.** A main office, branch or agency office of a financial institution may not be moved to a new location without the prior written approval of the superintendent, pursuant to section 336, except that a financial institution that meets the minimum standards set forth in section 412-A or 832 and any rules adopted pursuant to these sections and is not under an enforcement action that requires the superintendent's prior approval of a branch relocation, may relocate a main office or branch in this State without the prior approval of the superintendent. If the superintendent's approval is not required, then the financial institution must inform the superintendent at least 10 days prior to the proposed action. This announcement must be accompanied by a recording fee not to exceed \$100.

[ 1997, c. 398, Pt. E, §4 (AMD) .]

**2. Closing.** Any branch or agency office may be closed or discontinued with the prior written approval of the superintendent pursuant to section 336 after such public notice of the closing as the superintendent considers necessary.

[ 1997, c. 398, Pt. E, §4 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §E4 (AMD).

### §336. APPROVAL POWERS OF SUPERINTENDENT

**1. Notification required; application upon request.** If the superintendent's approval is required pursuant to section 332, subsection 2-A or section 335, subsection 1, at least 30 days prior to the relocation of a main office or the establishment, moving or closing of a branch or agency office authorized by this chapter, the institution shall notify the superintendent of the proposed action. A complete application for the branch establishment, moving or closing may be required only when the superintendent requests that a complete application be filed. Within 30 days of the notice, any interested person may request that the superintendent require a complete application. If the superintendent denies any interested person's request for a complete application, the denial must be in writing with the reasons for denial. The notification, or the application if requested, must be filed with the superintendent in the form and manner and containing information the superintendent may prescribe. If no application is requested within the 30-day period, the change is deemed approved. A fee must accompany the notification in an amount established by the superintendent but not to exceed 1/2 of the application fee.

[ 1999, c. 218, §13 (AMD) . ]

**2. Application requirements.** The superintendent may establish different application requirements according to the type of branch office or facility involved and the operations conducted thereat, and may permit joining of applications for the same types of branch offices or facilities; provided that the same requirements shall be applied to each application for the same type of branch office or facility.

[ 1975, c. 500, §1 (NEW) . ]

**3. Application fee.** No action may be taken on an application unless it is accompanied by a fee, to be credited and used as provided in section 214. The amount of the fee shall be established by the superintendent according to different application requirements, but in no instance shall it exceed \$1,000.

[ 1983, c. 201, §2 (AMD) . ]

**4. Decision-making criteria.** The superintendent shall approve or disapprove an application under this chapter in accordance with the requirements of section 252 and any rules adopted under section 252; and the superintendent may condition approval of such application, as necessary, to conform with the criteria as set forth in section 253.

[ 1997, c. 398, Pt. E, §6 (AMD) . ]

**5. Approvals; time extensions.** If the superintendent approves an application to establish and operate a branch or agency office, copies of the order must be furnished to the applicant institution. The order or acknowledgment lapses one year after its effective date if the office authorized thereunder has not opened for business, unless the superintendent for good cause shown has granted in writing an extension of time not to exceed 6 months. No fee may be charged for such an extension. Additional 6-month extensions may be granted by the superintendent for good cause shown at a fee established by the superintendent for such extensions not to exceed \$500.

[ 1997, c. 22, §7 (AMD) . ]

**6. Notice of opening.** Within 5 days after a branch office approved pursuant to subsection 1 has opened for business, the financial institution shall inform the superintendent in writing of the exact date of opening.

[ 1997, c. 398, Pt. E, §7 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§17,18 (AMD). 1983, c. 201, §2 (AMD). 1983, c. 614, §2 (AMD). 1985, c. 647, §5 (AMD). 1997, c. 22, §§6-8 (AMD). 1997, c. 398, §§E5-7 (AMD). 1999, c. 218, §13 (AMD).

### §337. REAL ESTATE FOR OFFICES AND FACILITIES

**1. Authority.** A financial institution may invest in improved or unimproved real estate, and in the erection or improvement of buildings thereon, together with, furniture, fixtures, equipment and capitalized leases on any fixed asset items for the purpose of providing offices or facilities for transaction of the institution's authorized business; and such buildings may include space for rental purposes.

[ 1979, c. 429, §7 (AMD) .]

**2. Limitations.** Real estate, furniture, fixtures, equipment and capitalized leases, combined, invested in pursuant to subsection 1 may not exceed 60% of the total capital. The superintendent may approve in writing, upon application by an institution and for good cause shown, a greater percentage.

[ 1997, c. 398, Pt. E, §8 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §7 (AMD). 1997, c. 398, §E8 (AMD).

### §338. OPERATING HOURS: BRANCH OFFICES AND FACILITIES

**1. Permissible operating hours.** A financial institution authorized to do business in the State may permit any of its branch offices, facilities or walk-up or drive-up windows of its main office or branch offices to remain open, or open for limited functions only, during such hours as it may determine from time to time. Any hours in which said branch office, facility or walk-up or drive-up window of its main office or branch office is open for limited functions only after its main office is closed are, with respect to such institution, not considered to be part of a business day.

[ 1999, c. 218, §14 (AMD) .]

**2. Limitation on liability.** Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution during hours at which said branch office, facility, or walk-up or drive-up window of its main office or branch office is open for limited functions only after its main office is closed may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

[ 1975, c. 500, §1 (NEW) .]

**3. Validity of transactions.** Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any other transaction by a financial institution in this State because done or performed during such hours in which a branch office, facility, or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §E9 (AMD). 1999, c. 218, §14 (AMD).

### **§339. MOBILE BRANCHES AND BRANCHES IN OTHER STATES**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §2 (AMD). 1979, c. 429, §8 (AMD). 1985, c. 577, (RPR). 1987, c. 692, §3 (AMD). 1993, c. 492, §4 (AMD). 1997, c. 398, §E10 (RP).

### **§339-A. INTERSTATE BRANCHES AND SATELLITE FACILITIES**

**1. Interstate branches.** Except as provided for in chapter 37, this Title may not be construed as permitting a financial institution to establish a branch office or facility in any state other than this State and a financial institution not authorized to do business in this State may not establish or operate a branch office or facility in this State.

A. [1995, c. 628, §19 (RP).]

B. [1995, c. 628, §19 (RP).]

[ 1995, c. 628, §19 (RPR) .]

#### **2. Satellite facilities.**

[ 2001, c. 211, §10 (RP) .]

#### SECTION HISTORY

1987, c. 692, §4 (NEW). 1995, c. 628, §19 (RPR). 1997, c. 398, §E11 (AMD). 2001, c. 211, §10 (AMD).

## **Chapter 34: CHANGES IN CHARTER AND OWNERSHIP FORM**

### **§341. APPLICABILITY OF CHAPTER; FEES**

**1. Applicability.** The provisions of this chapter apply whenever a financial institution subject to the laws of this State seeks to convert or amend its charter in order to change its chartering authority, change to a different form of ownership or adopt a new corporate name for the institution.

[ 1997, c. 398, Pt. F, §1 (AMD) .]

**2. Fees.** An application made pursuant to section 342, subsection 1 or 2 or section 342-A, 343, 344, 345 or 345-A may not be considered complete by the superintendent unless accompanied by an application fee payable to the Treasurer of State to be credited and used as provided in section 214. The amount of the fee must be established by the superintendent according to different application requirements, but in no instance may it exceed \$2,000.

[ 1999, c. 218, §15 (AMD) .]

**3. Superintendent's approval.** Following approval by the governing body for changes under section 342, subsection 1 or 2 or section 342-A, 343, 344 or 345, the financial institution shall forward to the superintendent for approval or disapproval, pursuant to the procedures and requirements of section 252, a certified copy of the authorizing resolution adopted by the governing body and such other information as considered necessary by the superintendent. If the superintendent disapproves the conversion plan, the superintendent shall state the reasons for the disapproval in writing and furnish them to the institution. The institution must be given an opportunity to amend the conversion plan to obviate the reasons for disapproval.

[ 1999, c. 218, §16 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 201, §3 (AMD). 1997, c. 398, §F1 (AMD). 1999, c. 218, §§15,16 (AMD).

## §342. CONVERSION TO NEW CHARTER: FEDERAL TO STATE; STATE TO FEDERAL; OUT OF STATE TO STATE

**1. Federal savings bank or savings and loan to state financial institution.** Any federal association or federal savings bank may convert to a financial institution organized under the laws of this State in the following manner. A federal savings bank or savings and loan association converting to a financial institution organized under the laws of this State may continue to use the designation "Federal" or "FSB" or derivatives of "Federal" or "FSB" in its corporate title, as long as the converted federal savings bank or savings and loan association also uses the designation "state association" or "S.A." in its corporate title.

A. At an annual meeting or a special meeting called for that purpose, a majority, or more if required by the institution's organizational documents, of the members or investors casting votes in person or by proxy must approve of the conversion. Notice of the meeting must be mailed to each member or investor at least 30 and not more than 60 days prior to the date of the meeting at the member's or investor's last known address as shown on the books of the institution. [1997, c. 398, Pt. F, §2 (AMD) .]

B. At the meeting required in paragraph A, the members or investors shall vote upon directors who will be the directors of the state-chartered institution after conversion becomes effective and the members shall also vote upon incorporators if a board of incorporators is to be established for the resulting state-chartered institution. [1997, c. 398, Pt. F, §2 (AMD) .]

C. Within 10 days after the meeting, a copy of the minutes of the meeting, verified by affidavit of the clerk or secretary, together with such additional information as the superintendent may require, must be submitted to the superintendent for the superintendent's approval or disapproval in writing of the proposed conversion pursuant to the procedures and requirements of section 252. The verified copies of the minutes of the meeting when filed are presumptive evidence of the holding and action of the meeting. [1991, c. 34, §2 (AMD) .]

D. Copies of the minutes of the meeting of members or investors, verified by affidavit of the clerk or secretary, and copies of the superintendent's written approval must be mailed to the Office of Thrift Supervision or its successor within 10 days after approval. [1997, c. 398, Pt. F, §2 (AMD) .]

E. Following compliance with all applicable requirements of federal law, if any, the directors elected pursuant to paragraph B shall execute 3 copies of the organizational documents upon which the superintendent shall endorse approval and those documents must be filed in accordance with the provisions of chapter 31 or 32. Each director shall sign and acknowledge the documents as a subscriber to the documents. [1997, c. 398, Pt. F, §2 (AMD).]

F. So far as applicable, the provisions of this Title apply to the resulting institution. [1991, c. 34, §2 (AMD).]

G. The rights of dissenting investors of a converting federal savings bank or federal savings and loan are governed by federal law. [1997, c. 398, Pt. F, §2 (NEW).]

H. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings relating to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate. [2005, c. 82, §6 (NEW).]

[ 2005, c. 82, §6 (AMD) .]

**2. National bank to financial institution.** A national bank may convert to a financial institution organized under the laws of this State in the following manner. A national bank converting to a financial institution organized under the laws of this State may continue to use the designation "National" or "NA" or derivatives of "National" or "NA" in its corporate title, as long as the converted national bank also uses the designation "state association" or "S.A." in its corporate title.

A. The national bank must comply with the conditions and limitations imposed by the laws of the United States governing the conversion. [1997, c. 398, Pt. F, §2 (AMD).]

B. The converting national bank may apply for a State charter by filing with the superintendent an application signed by its president and by a majority of its governing body setting forth the corporate action taken in compliance with the laws of the United States in paragraph A and affixing to the application the organizational documents governing the bank as a financial institution. [1999, c. 218, §18 (AMD).]

C. [1997, c. 398, Pt. F, §2 (RP).]

D. The rights of dissenting investors of a converting national bank are governed by federal law. [1997, c. 398, Pt. F, §2 (AMD).]

E. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings related to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate. [2005, c. 82, §7 (NEW).]

[ 2005, c. 82, §7 (AMD) .]

### **3. Thrift institution to federal savings and loan.**

[ 1997, c. 398, Pt. F, §2 (RP) .]

### **4. Trust company to national bank.**

[ 1997, c. 398, Pt. F, §2 (RP) .]

**5. Other conversions.**

[ 1997, c. 398, Pt. F, §2 (RP) . ]

**6. State to federal charter.** A financial institution organized under provisions of this Title may convert to a federal association or to a national bank in accordance with applicable federal laws and regulations and the following provisions.

A. A majority of the institution's investors or mutual voters, or more if required by the institution's organizational documents, must approve the conversion at an annual meeting or at a special meeting. Notice of the meeting must be mailed not less than 20 nor more than 30 days prior to the meeting to each investor or mutual voter at the investor's or voter's last known address as shown on the books of the institution. [1997, c. 398, Pt. F, §2 (NEW). ]

B. Upon completion of the conversion, the financial institution shall certify in writing that the conversion has been completed under applicable federal law. The charter of the converting financial institution terminates automatically upon issuance of the federal charter or certificate. Upon receipt of a copy of the charter or certificate showing the organization of the institution as a federal institution, the superintendent shall notify the Secretary of State that the conversion has been effected. [1997, c. 398, Pt. F, §2 (NEW). ]

C. The rights of dissenting investors of a financial institution converting to a federal charter are those specified in section 352, subsection 5. [1997, c. 398, Pt. F, §2 (NEW). ]

D. The financial institution must notify and provide the superintendent with a copy of the application filed with the appropriate federal regulator within 3 days of filing with the federal regulator. [2007, c. 79, §7 (NEW). ]

[ 2007, c. 79, §7 (AMD) . ]

**7. Out of state to State charter.** A financial institution organized under the laws of another state may convert to a financial institution organized under the laws of this State in the manner set out in this section.

A. The financial institution organized under the laws of another state must comply with the conditions and limitations imposed by the laws of that state governing the conversion. [2009, c. 228, §4 (NEW) . ]

B. The converting financial institution may apply for a state charter by filing with the superintendent an application signed by its president and by a majority of its governing body setting forth the corporate action taken in compliance with the laws of the state under which it is organized and affixing to the application the organizational documents governing the bank as a financial institution. [2009, c. 228, §4 (NEW) . ]

C. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings related to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate. [2009, c. 228, §4 (NEW) . ]

The rights of dissenting investors of a converting financial institution organized under another state are governed by the laws of that state.

[ 2009, c. 228, §4 (NEW) . ]

**SECTION HISTORY**



1975, c. 500, §1 (NEW). 1979, c. 663, §39 (AMD). 1983, c. 600, §§2,3 (AMD). 1985, c. 647, §6 (AMD). 1991, c. 34, §2 (AMD). 1991, c. 386, §§5,6 (AMD). 1997, c. 398, §F2 (AMD). 1999, c. 218, §§17,18 (AMD). 2005, c. 82, §§6,7 (AMD). 2007, c. 79, §7 (AMD). 2009, c. 228, §4 (AMD).

## **§342-A. AUTHORITY FOR EXPEDITED CONVERSION TO NEW CHARTER; FEDERAL TO STATE**

Notwithstanding any other provision of law or any charter, certificate of organization, articles of association, articles of incorporation or bylaw of any participating institution, when a charter conversion is approved by the directors of a financial institution authorized to do business in this State and that charter conversion is necessary for the protection of depositors, shareholders or the public and following compliance with any applicable requirements of federal law, the superintendent may order that the charter conversion become effective immediately. Any person aggrieved by a charter conversion executed pursuant to this section is entitled to judicial review of the superintendent's order in accordance with Title 5, chapter 375, subchapter VII. [1997, c. 22, §9 (NEW).]

### **SECTION HISTORY**

1997, c. 22, §9 (NEW).

## **§343. CONVERSION OF INSTITUTIONAL CHARTER**

A financial institution organized under Part 12 may convert its charter to do business as another institution organized under Part 12 or as a universal bank, and a universal bank organized under chapter 31 may convert to a financial institution organized under Part 12 in the following manner. [1997, c. 398, Pt. F, §3 (AMD).]

**1. Adoption of plan.** The institution's governing body shall adopt by a 2/3 vote of all members a conversion plan that must include:

- A. The name of the institution and its location; [1975, c. 500, §1 (NEW).]
- B. The type of the institution that resulting institution is to be; [1997, c. 398, Pt. F, §3 (AMD).]
- C. A method and schedule for terminating any nonconforming activities that would result from such conversion; [1997, c. 398, Pt. F, §3 (AMD).]
- D. A statement of the competitive impact resulting from such conversion, including the loss of particular financial services in the market area resulting from such conversion; [1997, c. 398, Pt. F, §3 (AMD).]
- E. A statement that the conversion is subject to approval of the superintendent and the institution's investors; and [1997, c. 398, Pt. F, §3 (AMD).]
- F. Such additional information as the superintendent may require, pursuant to regulations or otherwise. [1975, c. 500, §1 (NEW).]

[ 1997, c. 398, Pt. F, §3 (AMD) .]

**2. Superintendent's approval.** The superintendent shall approve a conversion plan in accordance with section 341, subsection 3.

[ 1997, c. 398, Pt. F, §3 (AMD) .]

**3. Vote of investors.** The conversion plan, as approved by the superintendent, must be submitted to the investors for their approval at an annual meeting, or at a special meeting called for that purpose, pursuant to the requirements of section 352, subsection 3. Approval requires a majority vote or higher if required by the institution's organizational documents of those entitled to vote.

[ 1997, c. 398, Pt. F, §3 (AMD) .]

**4. Executed plan; certificate; and effective date.** The following provisions apply to the executed plan, certificate and effective date.

A. Upon approval by the investors of the institution, the institution shall submit the executed conversion plan to the superintendent, together with all necessary amendments to the institution's organizational documents, each certified by an executive officer, clerk or secretary. [1997, c. 398, Pt. F, §3 (AMD) .]

B. The superintendent shall file one copy of the items set forth in paragraph A with the Secretary of State for record and issue to the resulting institution a certificate specifying the name of the converting institution and the name and organizational structure of the resulting institution. This certificate is conclusive evidence of the conversion and of the correctness of all proceedings relating to the conversion in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the converting institution is to be held. [1997, c. 398, Pt. F, §3 (AMD) .]

C. Unless a later date is specified in the conversion plan, the action becomes effective upon the issuance of the certificate in paragraph B, and the former charter of the converting institution terminates automatically. [1997, c. 398, Pt. F, §3 (AMD) .]

[ 1997, c. 398, Pt. F, §3 (AMD) .]

### **5. Effect of disapproval.**

[ 1997, c. 398, Pt. F, §3 (RP) .]

#### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1977, c. 155, §2 (AMD). 1991, c. 670, §4 (AMD). 1997, c. 398, §F3 (AMD).

## **§344. CONVERSION: MUTUAL OWNERSHIP CHANGE**

With the superintendent's approval, and in accordance with the provisions of this section and regulations adopted under this section, a mutual financial institution may convert to a cooperative financial institution, a cooperative financial institution may convert to a mutual financial institution and either a cooperative or mutual financial institution may convert to a financial institution organized under chapter 31 or 81 if the conversion is conducted in a manner equitable to all parties to the conversion, in the following manner. [1997, c. 398, Pt. F, §4 (AMD) .]

**1. Adoption of plan.** The financial institution's governing body shall adopt, by a 2/3 vote of all members of the governing body, a conversion plan, the provisions of which must comply with the requirements set forth in regulations adopted by the superintendent and that ensure that the interests of depositors and account holders in the net worth of the institution are equitably provided for.

[ 1997, c. 398, Pt. F, §4 (AMD) .]

**2. Public hearing.** The following provisions govern a public hearing.

A. [1997, c. 398, Pt. F, §4 (RP) .]

B. Public hearings on the conversion plan may be conducted by the superintendent in the community where the financial institution has its principal office. Such hearings may be held to determine whether the plan provides fair and equitable treatment to the depositors and to the institution. Hearings pursuant to this paragraph may be combined with any hearing on the application that may be scheduled pursuant to section 252. [1997, c. 398, Pt. F, §4 (AMD).]

C. [1997, c. 398, Pt. F, §4 (RP).]

[ 1997, c. 398, Pt. F, §4 (AMD) .]

**3. Account holders; informational meetings and approval.** The conversion plan must be presented to the members who are eligible account holders at special informational meetings held in each county where a branch office of the financial institution is located. The superintendent shall monitor these meetings. The conversion plan, as approved by the superintendent, must be submitted to the members who are eligible account holders of the financial institution for their approval at an annual meeting or at a special meeting called for that purpose, pursuant to the requirements of section 353, subsection 3, with such information in the notice as the superintendent may prescribe. A 2/3 vote of the members or eligible account holders is necessary to approve the conversion plan. Voting on the conversion plan may be in person or by written ballot. Any members or eligible account holders not present at the meeting in person or any member or eligible account holder not returning a written ballot must be regarded as having affirmatively voted for the conversion and must be counted among the required 2/3 vote if notice of this fact has been contained in the published and mailed notices and if the notice, along with a ballot, was mailed to the member or eligible account holder as required in section 351, subsection 4, paragraph A. The voting rights of account holders in a mutual financial institution organized under chapter 32 are the same as granted to members of cooperative financial institution organized under chapter 32 pursuant to section 325.

The superintendent may waive, upon written request by the applicants and for good cause shown, the requirement for informational meetings for a mutual financial institution converting to a cooperative financial institution or a cooperative financial institution converting to a mutual financial institution.

[ 1997, c. 398, Pt. F, §4 (AMD) .]

**4. Executed plan, certificate and effective date.** Upon approval of the plan of conversion by the members or eligible account holders, the institution shall comply with section 343, subsection 4 for the conversion to become effective, provided that the superintendent shall determine as a condition precedent to issuing a certificate that all applicable requirements of federal law, if any, have been complied with by the converting institution.

[ 1997, c. 398, Pt. F, §4 (AMD) .]

### **5. Effect of disapproval.**

[ 1997, c. 398, Pt. F, §4 (RP) .]

**6. Superintendent's authority.** In implementing this section, the superintendent may issue any and all rules, regulations and orders necessary to ensure that conversion to an equity institution or to another form of mutual organization is conducted in a fair and equitable manner, so as to ensure the safety and soundness of the institution and the protection of the institution's net worth including, but not limited to, restrictions on the transfer or disposition of shares in the resulting institution, or mergers or consolidations by the resulting institution.

[ 1997, c. 398, Pt. F, §4 (AMD) .]

### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1981, c. 553, §1 (AMD). 1985, c. 251, (AMD).  
1997, c. 398, §F4 (AMD).

## §345. CONVERSION; INVESTOR TO MUTUAL OWNERSHIP

With the superintendent's approval, and in accordance with the provisions of this section and rules adopted under this section, a financial institution organized under chapter 31 may convert to a financial institution organized under chapter 32, if this conversion is conducted in a manner fair and equitable to its investors, in the following manner. [1997, c. 398, Pt. F, §5 (AMD).]

**1. Procedure.** The governing body must adopt and approve by a 2/3 vote a conversion plan that addresses conditions as the superintendent may require.

[ 1997, c. 398, Pt. F, §5 (AMD) .]

**1-A. Vote of investors.** The conversion plan, as approved by the superintendent, must be submitted to the investors for their approval at an annual meeting or at a special meeting called for that purpose. Approval requires a majority vote of investors, unless a higher percentage is required by the institution's organizational documents.

[ 1997, c. 398, Pt. F, §5 (NEW) .]

**2. Dissenting investor.** The rights of any investors not voting for the conversion plan are as set forth in section 352, subsection 5.

[ 1997, c. 398, Pt. F, §5 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §F5 (AMD).

## §345-A. AUTHORITY FOR EXPEDITED CHARTER CONVERSIONS

Notwithstanding any other provision of law, or any organizational document of any participating institution, when a charter conversion is approved by the governing body of a financial institution authorized to do business in this State as a component of a plan of merger, consolidation or acquisition with another financial institution or financial institution holding company, regardless of this institution's or holding company's domicile, and following compliance with all applicable requirements of federal law, if any, the superintendent may order that the charter conversion become effective immediately. The superintendent may take such action if the superintendent believes that it is necessary for the protection of depositors or the public. Any person aggrieved by a charter conversion executed pursuant to this section is entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. [1997, c. 398, Pt. F, §6 (AMD).]

### SECTION HISTORY

1981, c. 539, §1 (NEW). 1987, c. 40, §1 (AMD). 1997, c. 398, §F6 (AMD).

## §345-B. CONVERSION; INVESTOR TO INVESTOR OWNERSHIP

With the superintendent's approval and in accordance with the provisions of this section and rules adopted under this section, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, an equity financial institution organized under chapter 31 may convert its ownership structure to another type of ownership structure permissible under chapter 31 if this conversion is conducted in a manner fair and equitable to its investors, in the following manner. [1997, c. 398, Pt. F, §7 (NEW).]

**1. Procedure.** The governing body must adopt and approve by a 2/3 vote a conversion plan that addresses conditions as the superintendent may require.

[ 1997, c. 398, Pt. F, §7 (NEW) .]

**2. Vote of investors.** The conversion plan, as approved by the superintendent, must be submitted to the investors for their approval at an annual meeting or at a special meeting called for that purpose. Approval requires a majority vote of investors, unless a higher percentage is required by the institution's organizational documents.

[ 1997, c. 398, Pt. F, §7 (NEW) .]

**3. Dissenting investors.** The rights of any investors not voting for the conversion plan are as set forth in section 352, subsection 5.

[ 1997, c. 398, Pt. F, §7 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §F7 (NEW).

## §346. CHANGE OF INSTITUTIONAL NAME

**1. Authorization; prohibitions.** Any financial institution may change its corporate name to another name if the name selected is not the same or deceptively similar to the name of any other financial institution authorized to do business in this State.

[ 1997, c. 398, Pt. F, §8 (AMD) .]

**2. Requirements.** A change in the name of a financial institution requires compliance with the following requirements:

A. Approval pursuant to section 314-A or 325 by investors or mutual voters and the superintendent to amend the name set forth in the institution's organizational document; and [1997, c. 398, Pt. F, §8 (AMD) .]

B. [1997, c. 398, Pt. F, §8 (RP) .]

C. The superintendent shall notify forthwith the institution of the superintendent's decision; and, if the superintendent approves the name change, the superintendent shall file a certificate with the Secretary of State indicating approval. [1997, c. 398, Pt. F, §8 (AMD) .]

[ 1997, c. 398, Pt. F, §8 (AMD) .]

**3. Effective date.** The name change shall become effective from the time of filing with the Secretary of State, or upon a date subsequent thereto if such date is fixed in the certificate, and shall become the corporate title of the institution thereafter.

[ 1975, c. 500, §1 (NEW) .]

**4. Continuing entity.** The adoption of a new name shall not affect the validity of any acts, transactions or documents wherein the former name was used. All deeds, mortgages, contracts, judgments, proceedings and records made, received, entered into, carried on, or done by an institution before adoption of the change of name, but wherein the institution is called by the name so subsequently adopted, shall be as valid as if the institution was called therein by the name set forth in its original articles of incorporation.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §F8 (AMD).

## §347. EFFECT OF CONVERSION OR AMENDMENT; NONCONFORMING ACTIVITIES

The financial institution resulting from any action taken pursuant to the authority granted in this chapter is subject to the provisions of sections 357 and 358 and shall comply with the requirements of these sections and rules adopted under these sections. [1997, c. 398, Pt. F, §9 (AMD).]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §F9 (AMD).

## Chapter 35: MERGERS, CONSOLIDATIONS AND ACQUISITIONS

## §351. APPLICABILITY OF CHAPTER; FEES

**1. Applicability.** The provisions of this chapter govern mergers and consolidations undertaken by financial institutions and industrial banks subject to the laws of this State and must set forth the procedures for and limitations on the acquisition of all or substantially all of the assets of such institutions by another institution.

[ 1997, c. 398, Pt. G, §1 (AMD) .]

**2. Fees.** An application made pursuant to sections 352, 353, 354, 354-A, 355 and 355-A may not be deemed complete by the superintendent unless accompanied by an application fee of \$2,500, payable to the Treasurer of State, to be credited and used as provided in section 214.

[ 1997, c. 398, Pt. G, §1 (AMD) .]

**3. Superintendent's approval required.** Following approval by the governing body of each participating institution, the plan of merger, consolidation, purchase or assumption, together with certified copies of the authorizing resolutions adopted by the governing body of each participating institution, must be forwarded to the superintendent for approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the superintendent shall state the reason or reasons for the disapproval in writing and furnish them to the participating institutions. The institutions must be given an opportunity to amend the plan to obviate the reasons for disapproval.

[ 2007, c. 79, §8 (AMD) .]

**3-A. Superintendent's approval not required.** Notwithstanding subsection 3, if the surviving institution of a merger, consolidation, purchase or assumption is a federally chartered institution and the transaction is subject to approval by its federal regulator, approval by the superintendent is not required. The financial institution shall notify and provide the superintendent a copy of the application filed with the appropriate federal regulator within 3 days of filing with the federal regulator.

[ 2007, c. 79, §9 (NEW) .]

**4. Vote of investors or mutual voters.** The plan of merger or consolidation, as approved by the superintendent, must be submitted to the investors or mutual voters of the participating institutions for their approval at an annual meeting or at a special meeting called for that purpose in the following manner.

A. Notice of such a meeting must be published at least once a week for 3 successive weeks in at least one newspaper of general circulation in the county or counties where each participating institution's principal office is located or in other newspapers as the superintendent may designate. The notice must be mailed to each investor of record or mutual voter at the address on the books of each participating institution at least 15 days prior to the date of the meeting. [1997, c. 398, Pt. G, §1 (NEW).]

B. A 2/3 vote of each class of investor or a 2/3 vote of the mutual voters of each participating institution is necessary to approve the plan of merger or consolidation at the meeting called for this purpose. The vote constitutes the adoption of the organizational documents of the resulting institution, including amendments, contained in the merger or consolidation agreement. [1997, c. 398, Pt. G, §1 (NEW).]

[ 1997, c. 398, Pt. G, §1 (NEW) .]

**5. Executed plan; certificate; effective date.** The following provisions apply to the executed plan, certificate and effective date.

A. Upon approval by the investors or mutual voters of the participating institutions, the chief executive officer, president or vice-president and the clerk or secretary of each institution shall submit the executed plan of merger or consolidation to the superintendent, together with the resolutions of the investors or mutual voters approving it, each certified by these officers. [1997, c. 398, Pt. G, §1 (NEW).]

B. Upon receipt of the items in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of each participating institution and the name of the resulting institution and shall file a copy of the certificate and the certified votes with the Secretary of State for record. This certificate is conclusive evidence of the merger or consolidation and of the correctness of all proceedings relating to the merger or consolidation in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the participating institutions is to be held. [1997, c. 398, Pt. G, §1 (NEW).]

C. Unless a later date is specified in the certificate, the merger or consolidation is effective upon issuance of the certificate in paragraph B and the charters of all but the resulting institution terminate automatically. [1997, c. 398, Pt. G, §1 (NEW).]

D. Any plan of merger or consolidation may contain a provision that, notwithstanding approval of the investors, mutual voters or the superintendent, the plan may be abandoned at any time prior to the effective date of the merger or consolidation by the governing body of any participating institution either at the absolute discretion of the governing body or upon the occurrence of any stated condition. [1997, c. 398, Pt. G, §1 (NEW).]

[ 1997, c. 398, Pt. G, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 201, §4 (AMD). 1997, c. 398, §G1 (AMD). 2007, c. 79, §§8, 9 (AMD).

## §352. MERGERS AND CONSOLIDATIONS; INVESTOR-OWNED INSTITUTIONS

Any 2 or more investor-owned institutions authorized to do business in this State may merge or consolidate into one investor-owned institution organized under the laws of this State in accordance with the procedures, and subject to the conditions and limitations, set forth in this section. [1997, c. 398, Pt. G, §2 (AMD).]

**1. Adoption of plan.** The governing body of each participating institution shall adopt, by a majority vote or higher if required by its organizational documents, a plan of merger or consolidation on such terms as mutually agreed upon. The plan must include:

A. The names of the participating institutions and their locations; [1975, c. 500, §1 (NEW).]

B. [1997, c. 398, Pt. G, §2 (RP).]

C. With respect to the resulting institution: the name and location of its principal office, branch offices and facilities; the name, address and occupation of each director who is to serve until the next annual meeting of the investors; the name and address of each officer; the amount of capital, the number and the par value of each class of equity interest; and the amendments required to be made to the institution's organizational documents; [1997, c. 398, Pt. G, §2 (AMD).]

D. Provisions governing the manner and basis of converting the equity interests of the participating institutions into equity interests or other securities of the resulting institution and, if any equity interests of any of the participating institutions are not to be converted solely into equity interests or other securities of the resulting institution, provisions governing the amount of cash, property, rights or securities of any other institution or corporation that is to be paid or delivered to the holders of the equity interests in exchange for or upon surrender of the equity interests. The cash, property, rights or securities of any other institution or corporation may be in addition to or in lieu of the equity interests or securities of the resulting institution; [1997, c. 398, Pt. G, §2 (AMD).]

E. A statement that the agreement is subject to approval of the superintendent and of the investors of each participating institution; [1997, c. 398, Pt. G, §2 (AMD).]

F. Provisions, if applicable, governing the manner of disposing of equity interests of the resulting institution not taken by dissenting investors of the participating institutions; and [1997, c. 398, Pt. G, §2 (AMD).]

G. The anticipated effective date of such merger or consolidation; and such other provisions and details as may be necessary to perfect the merger or consolidation or as may be required by the superintendent. [1997, c. 398, Pt. G, §2 (AMD).]

[ 1997, c. 398, Pt. G, §2 (AMD) .]

## 2. Superintendent's approval.

[ 1997, c. 398, Pt. G, §2 (RP) .]

**2-A. Superintendent's approval.** The superintendent shall approve the plan of merger or consolidation in accordance with section 351, subsection 3.

[ 1997, c. 398, Pt. G, §2 (NEW) .]

**3. Vote of investors.** The plan of merger or consolidation, as approved by the superintendent, must be submitted to the investors of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in accordance with section 351, subsection 4 and the following provisions.

Notice required pursuant to section 351, subsection 4 must state that dissenting investors will be entitled to payment only for the value of those equity interests that are voted against approval of the plan. Published notice may be waived if written waivers are received from the holders of 2/3 of the outstanding voting equity interests of each class stock of each participating institution.

A. [1997, c. 398, Pt. G, §2 (RP).]

B. [1997, c. 398, Pt. G, §2 (RP).]

[ 1997, c. 683, Pt. A, §1 (AMD) .]

**4. Executed plan; certificate; effective date.** The executed plan certificate and effective date must be in accordance with section 351, subsection 5.

A. [1997, c. 398, Pt. G, §2 (RP).]

B. [1997, c. 398, Pt. G, §2 (RP).]



C. [1997, c. 398, Pt. G, §2 (RP).]

[ 1997, c. 398, Pt. G, §2 (AMD) .]

**5. Rights of dissenting investors.** The rights of investors dissenting to the merger or consolidation are those specified in Title 13-C or Title 31, chapter 15, 19 or 21, depending upon the organizational form of the institution. To the extent that dissenters' rights are not addressed in Title 31 or these rights are less beneficial to the dissenting investors than those rights listed in the institution's organizational documents, the organizational documents govern.

A. [1997, c. 398, Pt. G, §2 (RP).]

[ 2009, c. 629, Pt. A, §3 (AFF); 2009, c. 629, Pt. B, §4 (AMD) .]

**6. Federally chartered institution as participant.** If one of the parties to a merger or consolidation is a federally chartered investor-owned institution, the participants shall comply with all requirements imposed by federal law for such merger or consolidation in addition to the requirements contained in this Title and shall provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in section 351, subsection 5 relating to such merger or consolidation. The rights of dissenting investors in such federally chartered institutions are governed by federal law.

[ 1997, c. 398, Pt. G, §2 (AMD) .]

#### **7. Merger of investor-owned institution with national bank.**

A. Nothing contained in the law of this State restricts the right of a financial institution organized under chapter 31 to merge or consolidate into a resulting national bank. The action to be taken by the investor-owned institution and its rights and liabilities and those of its investors are the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this State, except that a vote of the holders of 2/3 of each class of equity interest of an investor-owned institution is required for the merger or consolidation and that, on merger or consolidation into a national bank, the rights of dissenting investors are those specified in federal law for national banks. [1997, c. 398, Pt. G, §2 (AMD).]

B. Upon the completion of the merger or consolidation, the franchise of the participating investor-owned institution terminates automatically. [1997, c. 398, Pt. G, §2 (AMD).]

[ 1997, c. 398, Pt. G, §2 (AMD) .]

#### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1985, c. 529, (AMD). 1997, c. 398, §G2 (AMD). 1997, c. 683, §A1 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B12 (COR). 2005, c. 543, §D4 (AMD). 2005, c. 543, §D18 (AFF). 2009, c. 629, Pt. A, §3 (AFF). 2009, c. 629, Pt. B, §4 (AMD).

### **§353. MERGERS AND CONSOLIDATIONS; MUTUAL FINANCIAL INSTITUTIONS**

Any 2 or more mutual financial institutions authorized to do business in this State may merge or consolidate into one mutual financial institution organized under chapter 32 in accordance with the procedures and subject to the conditions and limitations set forth in this section. [1997, c. 398, Pt. G, §3 (AMD) .]

**1. Adoption of plan.** The governing body of each participating institution shall adopt, by a majority vote or higher if required by its organizational documents, a plan of merger or consolidation on such terms as are mutually agreed upon. The plan must include:

A. The names of the participating institutions and their locations; [1975, c. 500, §1 (NEW).]

B. [1997, c. 398, Pt. G, §3 (RP).]

C. With respect to the resulting institution, the name and location of its principal office, branch offices and facilities; the name, address and occupation of each director who is to serve until the next annual meeting of the mutual voters; and the name and address of each officer; [1997, c. 398, Pt. G, §3 (AMD).]

D. The mode for carrying the plan into effect and the proposed effective date; [1997, c. 398, Pt. G, §3 (AMD).]

E. The manner of converting deposits, accounts or shares of such institutions into deposits, accounts or shares of the resulting institution; [1997, c. 398, Pt. G, §3 (AMD).]

F. A statement that the agreement is subject to the approval of the superintendent and of the mutual voters of each participating institution; and [1997, c. 398, Pt. G, §3 (AMD).]

G. Such other provisions and details as may be necessary to perfect the merger or consolidation or as may be required by the superintendent. [1997, c. 398, Pt. G, §3 (AMD).]

[ 1997, c. 398, Pt. G, §3 (AMD) .]

## 2. Superintendent's approval.

[ 1997, c. 398, Pt. G, §3 (RP) .]

**2-A. Superintendent's approval.** The superintendent shall approve the plan of merger or consolidation in accordance with section 351, subsection 3.

[ 1997, c. 398, Pt. G, §3 (NEW) .]

**3. Vote of mutual voters.** The plan of merger or consolidation, as approved by the superintendent, must be submitted to the mutual voters of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in accordance with section 351, subsection 4 and with the following requirements.

A. Copies of the notice required under section 351, subsection 4, paragraph A, must be posted in a conspicuous place in all offices of the participating institutions, at least 15 days prior to the meeting. [1997, c. 398, Pt. G, §3 (AMD).]

B. Any mutual voter not present at the meeting in person must be regarded as having affirmatively voted for the merger or consolidation and be counted among the required 2/3 vote if notice of this fact is contained in the published and mailed notices and if this notice was mailed to the mutual voter as required in section 351, subsection 4, paragraph A. [1997, c. 398, Pt. G, §3 (AMD).]

C. [1997, c. 398, Pt. G, §3 (RP).]

[ 1997, c. 398, Pt. G, §3 (AMD) .]

**4. Executed plan; certificate; effective date.** The executed plan, certificate and effective date must be in accordance with section 351, subsection 5.

A. [1997, c. 398, Pt. G, §3 (RP).]

B. [1997, c. 398, Pt. G, §3 (RP).]

C. [1997, c. 398, Pt. G, §3 (RP).]

[ 1997, c. 398, Pt. G, §3 (AMD) .]

**5. Federally-chartered institution as participant.** If one of the parties to a merger or consolidation is a federally chartered mutual financial institution, the participants shall comply with all requirements imposed by federal law for such merger or consolidation and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in section 351, subsection 5 relating to such merger or consolidation.

[ 1997, c. 398, Pt. G, §3 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §G3 (AMD).

## **§354. MERGERS AND CONSOLIDATIONS; INVESTOR-OWNED AND MUTUAL FINANCIAL INSTITUTIONS**

**1. Resulting mutual financial institution.** An investor-owned financial institution may be merged into or consolidated with a mutual financial institution organized under the laws of this State in accordance with the procedures and subject to the conditions and limitations set forth in this subsection.

A. The acquiring mutual financial institution shall comply with the requirements of section 353, subsections 1 to 4, except that the plan of merger or consolidation must state the amount that institution will pay for the equity interests in the investor-owned institution to be acquired and additional information the superintendent considers appropriate. [1997, c. 398, Pt. G, §4 (AMD).]

B. [1997, c. 22, §10 (RP).]

C. [1997, c. 22, §10 (RP).]

D. [1997, c. 22, §10 (RP).]

E. The investor-owned institution to be acquired shall comply with section 352, subsections 1 to 6. [1997, c. 398, Pt. G, §4 (AMD).]

F. Sections 357 and 358 apply to mergers or consolidations made pursuant to this section. [1997, c. 398, Pt. G, §4 (AMD).]

[ 1997, c. 398, Pt. G, §4 (AMD) .]

**2. Resulting investor-owned institution.** Except as the superintendent may authorize pursuant to section 354-A, a mutual financial institution may not merge into an investor-owned institution organized under the laws of this State without prior compliance with section 344 and all rules adopted under that section.

[ 1997, c. 398, Pt. G, §4 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 22, §10 (AMD). 1997, c. 398, §G4 (AMD) .

## **§354-A. AUTHORITY FOR EXPEDITED MERGERS AND CONSOLIDATIONS**

Notwithstanding any other provision of law, or any organizational document of any participating institution, following approval of the plan of merger or consolidation by a majority vote of the governing body of each participating institution and receipt by the superintendent of certified copies of the authorizing resolutions adopted by the governing body of each participating institution, the superintendent may order that the merger or consolidation become effective immediately if the superintendent believes that the action is necessary for the protection of depositors or the public. Any person aggrieved by a merger or consolidation

pursuant to this section is entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. [1997, c. 398, Pt. G, §5 (AMD).]

#### SECTION HISTORY

1981, c. 539, §2 (NEW). 1997, c. 398, §G5 (AMD).

## §355. ACQUISITION OF ASSETS; ASSUMPTION OF LIABILITIES

A financial institution organized under the laws of this State may acquire the assets of, or assume the liabilities of, any other financial institution authorized to do business in this State, in accordance with the procedures and subject to the conditions and limitations set forth in this section. [1997, c. 398, Pt. G, §6 (AMD).]

**1. Adoption of plan.** The governing body of the acquiring or assuming institution and the governing body of the transferring institution shall adopt by majority vote a plan for acquisition, assumption or sale on terms that are mutually agreed upon. The plan must include:

- A. The names and types of the institutions involved; [1975, c. 500, §1 (NEW).]
- B. A statement setting forth the material terms of the proposed acquisition, assumption or sale, including, if applicable, the plan for disposition of all assets and liabilities not subject to the plan; [1991, c. 386, §8 (AMD).]
- C. A statement, if applicable, of the plan governing liquidation of the transferring institution pursuant to section 364 upon execution of the plan, with that liquidation being a required provision of the plan; [1991, c. 386, §8 (AMD).]
- D. A statement that the entire transaction is subject to written approval of the superintendent and, if the transaction involves all or substantially all of the assets or liabilities of the transferring institution, the approval of the transferring institution's investors or mutual voters; [1997, c. 398, Pt. G, §6 (AMD).]
- E. If an investor-owned institution is the transferring institution and the proposed sale is not for cash, a clear and concise statement that investors of the institution voting against the proposed sale are entitled to rights set forth in section 352, subsection 5; and [1997, c. 398, Pt. G, §6 (AMD).]
- F. The proposed effective date of the acquisition, assumption or sale and all other information and provisions that are necessary to execute the transaction or that are required by the superintendent. [1991, c. 386, §8 (AMD).]

[ 1997, c. 398, Pt. G, §6 (AMD) .]

### 2. Superintendent's approval.

[ 1997, c. 398, Pt. G, §6 (RP) .]

**2-A. Superintendent's approval.** The superintendent shall approve the plan of merger or consolidation in accordance with section 351, subsection 3.

[ 1997, c. 398, Pt. G, §6 (NEW) .]

**3. Vote of investors or mutual voters.** If the transaction involves all or substantially all of the assets or liabilities of the transferring institution or if the transferring institution's organizational documents require, the plan of acquisition, assumption or sale must be presented to the investors or mutual voters of the transferring

institution for their approval, and their approval must be obtained in accordance with section 351, subsection 4. If the approval of investors is required, then investors dissenting to the transaction have the rights set forth in section 352, subsection 5.

[ 1997, c. 398, Pt. G, §6 (AMD) .]

**4. Executed plan; certificate; effective date.**

A. If the plan is approved by the investors or mutual voters of the transferring institution, the chief executive officer, president or vice-president and the clerk or secretary of such institution shall submit the executed plan to the superintendent, together with a copy of the resolution of the investors or mutual voters approving it, each certified by these officers. [1997, c. 398, Pt. G, §6 (AMD).]

B. Upon receipt of the items set forth in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall certify, in writing, to the participants that the plan has been approved and is in compliance with the provisions of this Title. [1975, c. 500, §1 (NEW).]

C. Notwithstanding approval of the investors or mutual voters or certification by the superintendent, the transferring institution's governing body may, in its discretion, abandon such a transaction without further action or approval by the investors or mutual voters, subject to the rights of 3rd parties under any contracts relating to the transaction. [1997, c. 398, Pt. G, §6 (AMD).]

[ 1997, c. 398, Pt. G, §6 (AMD) .]

**5. Federally chartered institution as participant.** If one of the participants in a transaction under this section is a federally chartered institution, all participants shall comply with such requirements as may be imposed by federal law for such an acquisition, assumption or sale and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in subsection 4, paragraph B relating to such acquisition, assumption or sale; provided that if the purchasing or assuming institution is a federally chartered institution, approval by the superintendent is not required.

[ 1997, c. 398, Pt. G, §6 (AMD) .]

**6. Investor-owned institution acquiring mutual financial institution.** A mutual financial institution may not sell all or substantially all of its assets to an investor-owned institution without prior compliance with section 344 and all rules adopted under section 344.

[ 1997, c. 398, Pt. G, §6 (AMD) .]

**7. Other sections.** Sections 357 and 358 apply to acquisitions, assumptions and sales made pursuant to this section.

[ 1997, c. 398, Pt. G, §6 (AMD) .]

**8. Applicability.** This section does not apply to a transfer of assets of a financial institution in the ordinary course of business that does not include any assumption of deposit liabilities.

[ 1991, c. 386, §10 (NEW) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §40 (AMD). 1991, c. 386, §§7-10 (AMD). 1997, c. 398, §G6 (AMD).

## §355-A. AUTHORITY FOR EXPEDITED ACQUISITIONS

Notwithstanding any other provision of law, or any organizational document of any participating institution, the superintendent may order that the acquisition of assets and assumption of liabilities become effective immediately if the superintendent determines that the action is necessary for the protection of depositors or the public. This action may be taken upon receipt of the following: [1997, c. 398, Pt. G, §7 (AMD).]

**1. Authorizing resolutions and plan.** Certified copies of the authorizing resolutions adopted by the respective governing bodies of the acquiring or assuming financial institution or financial institution holding company, and a copy of the plan of acquisition of assets and assumption of liabilities approved by a majority vote of the governing bodies of the acquiring or assuming financial institution or financial institution holding company and the transferring institution; or

[ 1997, c. 398, Pt. G, §8 (AMD) .]

**2. Notice.** Notice, containing information required by the superintendent, from any other person of intent to acquire the assets and assume the liabilities of a financial institution or financial institution holding company.

[ 1991, c. 34, §3 (NEW) .]

Any person aggrieved by an acquisition of assets and assumption of liabilities pursuant to this section is entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. [1991, c. 34, §3 (NEW).]

### SECTION HISTORY

1987, c. 40, §2 (NEW). 1991, c. 34, §3 (AMD). 1997, c. 398, §§7,8 (AMD).

## §356. BOOK VALUE OF ASSETS

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §9 (RP).

## §357. EFFECT OF MERGER, CONSOLIDATION, CONVERSION OR ACQUISITION

From and after the effective date of a merger, consolidation, conversion or acquisition, the resulting institution may conduct business in accordance with the terms of the plan as approved; provided that: [1975, c. 500, §1 (NEW).]

**1. Continuing entity.** Even though the charter of any participating or converting institution has been terminated, the resulting institution shall be deemed to be a continuation of the entity of the participating or converting institution such that all property of the participating or converting institution, including rights, titles and interests in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, including appointments, designations and nominations, and all other rights and interests as trustee, personal representative, guardian and conservator, and in every other fiduciary capacity, shall immediately by act of law and without any conveyance or transfer and without further act or deed be vested in and continue to be that property of the resulting institution; and such institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was

possessed, held and enjoyed by the participating or converting institution and such resulting institution as of the time of the taking effect of such merger, consolidation, conversion or acquisition shall continue to have and succeed to all the rights, obligations and relations of the participating or converting institution.

[ 1983, c. 42, (AMD) . ]

**2. Effect on judicial proceedings.** All pending actions and other judicial proceedings to which the participating or converting institution is a party shall not be deemed to have been abated or to have been discontinued by reason of such merger, consolidation, conversion or acquisition, but may be prosecuted to final judgment, order or decree in the same manner as if such action had not been taken; and such institution resulting from such merger, consolidation, conversion or acquisition may continue such action in its new name, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against the participating or converting institution theretofore involved in such judicial proceedings.

[ 1975, c. 500, §1 (NEW) . ]

**3. Creditor's rights.** The resulting institution in a merger, consolidation, conversion or acquisition shall be liable for all obligations of the participating or converting institution which existed prior to such action, and the action taken shall not prejudice the right of a creditor of the participating or converting institution to have his debts paid out of the assets thereof, nor shall such creditor be deprived of, or prejudiced in, any action against the officers, directors, incorporators or members of a participating or converting institution for any neglect or misconduct.

[ 1975, c. 500, §1 (NEW) . ]

**4. Exception.** In the event of an acquisition of assets pursuant to section 355, the provisions of subsections 1 through 3 of this section shall apply only to the assets acquired and the liabilities assumed by the resulting institution; provided that sufficient assets to satisfy all liabilities not assumed by the resulting institution are retained by the transferring institution.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 42, (AMD).

### §358. NONCONFORMING ACTIVITIES: CESSATION

If, as a result of a merger, consolidation, conversion or acquisition pursuant to this Title, the resulting institution is to be of a different type or of a different character than any one or all of the participating or converting institutions, such resulting institution shall be subject to the following conditions and limitations: [1975, c. 500, §1 (NEW).]

**1. Plan for termination.** The plan of merger, consolidation, conversion or acquisition shall set forth the method and schedule for terminating those activities not permitted by the laws of this State for the resulting institution, but which were authorized for any of the participating or converting institutions.

[ 1975, c. 500, §1 (NEW) . ]

**2. Effective date.** The plan of merger, consolidation, conversion or acquisition shall state that from the effective date of such action, the resulting institution shall not engage in any nonconforming activities, except to the extent necessary to fulfill obligations existing prior to merger, consolidation, conversion or acquisition, pursuant to subsection 4.

[ 1975, c. 500, §1 (NEW) . ]

**3. Compliance with limitations.** If, as a result of such merger, consolidation, conversion or acquisition, the resulting institution exceeds any lending, investment or other limitations imposed by this Title, it shall conform to such limitations within such period of time as shall be established by the superintendent.

[ 1975, c. 500, §1 (NEW) .]

**4. Divestiture.** The superintendent may, as a condition to such merger, consolidation, conversion or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as he may deem appropriate under the circumstances.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## Chapter 36: CONSERVATION, LIQUIDATION AND INSOLVENCY

### §361. APPLICABILITY OF CHAPTER

Notwithstanding any other provisions of law, the provisions of this chapter apply to and supersede any other provision of law governing conservation, liquidation and insolvency of financial institutions organized under the laws of this State. [2003, c. 322, §14 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §H1 (AMD). 2003, c. 322, §14 (AMD).

### §362. PAYMENTS RESTRAINED TO PRESERVE ASSETS OR PROTECT DEPOSITORS

**1. Application to court.** Whenever it may become necessary to preserve the assets or protect depositors in a financial institution, the Superior Court may, on application by the superintendent, the governing body of such institution or 3/4 of its depositors, members or investors or more if required by the institution's organizational documents, after due notice, issue an order restraining the institution from paying out its funds or any portion of its funds or from declaring or paying any dividends or deposits for such time as the court considers advisable.

[ 1997, c. 398, Pt. H, §2 (AMD) .]

**2. Authority of court.** The court may at any time revoke or modify the original order and authorize the institution to pay dividends upon its deposits, or pay any portion of its deposits to such as may desire to withdraw the same or make any other or further order that may be necessary to protect the depositors or members of such institution.

[ 1975, c. 500, §1 (NEW) .]

**3. Rights of parties.** Nothing in this section shall be construed to take away the rights of the parties in interest to proceed under sections 365 or 366, subsection 1.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §H2 (AMD).



## §363. CONSERVATION OF ASSETS

(REPEALED)

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 34, §4 (RP).

## §363-A. CONSERVATION OF ASSETS

**1. Appointment of conservator.** Whenever, in the judgment of the superintendent, because of unsafe or unsound practice in conducting the business of a financial institution or other potentially hazardous condition, it is necessary to conserve or revalue the assets of the financial institution or to reorganize and put into sound condition the financial institution for the benefit of depositors, beneficiaries of fiduciary accounts, creditors or the public, the superintendent may issue an order describing the unsafe, unsound or other hazardous condition and appointing one or more conservators for the financial institution, who shall endeavor promptly to remedy the condition or conditions stated in the order.

A. The superintendent may require a bond as the superintendent determines proper and issue orders as necessary to carry out the provisions of this section. The superintendent may appoint a deputy superintendent or other person, including the federal corporation insuring the financial institution's accounts pursuant to section 422, as conservator. [2005, c. 83, §7 (NEW).]

B. A conservator, in addition to the powers set forth elsewhere in this chapter and other powers authorized in an order of the superintendent, has all the rights, powers, privileges and authority possessed by the officers, governing body, corporators, members and investors of the financial institution, including the power to remove any officer or member of the governing body if the order of removal is approved in writing by the superintendent. The conservator may, in the name of the financial institution:

(1) Prosecute and defend all suits and other legal proceedings; and

(2) Execute, acknowledge and deliver all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or any compromise approved by the superintendent. Any deed or other instrument executed pursuant to this subparagraph is valid and effective for all purposes to the same extent as though fully authorized by the financial institution. [2005, c. 83, §7 (NEW).]

C. If a deputy superintendent or other employee of the bureau is appointed conservator, no additional compensation need be paid, but any reasonable and necessary expenses as conservator, including expenses for assistants and counsel, must be paid by the financial institution. If a person other than an employee of the bureau is appointed conservator, then the compensation is determined by the superintendent and must be paid by the financial institution along with any reasonable and necessary expenses of the conservator, including expenses for assistants and counsel. [2005, c. 83, §7 (NEW).]

D. In the event that the federal corporation insuring the financial institution's deposits or accounts pursuant to section 422 accepts an appointment as conservator, the corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the financial institution to the extent necessary for the corporation to perform its duties as conservator or as may be necessary under applicable federal law to effectuate the appointment. If the corporation pays or makes available for payment the insured deposit liabilities of a financial institution by reason of actions taken pursuant to this section, the corporation becomes subrogated to the rights of all the depositors of the financial institution, whether or not it has become conservator of the financial institution, in the same manner and to the same extent as it would be subrogated in the conservation of a financial institution operating under a federal charter and insured by the corporation. [2005, c. 83, §7 (NEW).]

[2005, c. 83, §7 (NEW).]

**2. Segregation of assets.** A conservator appointed under subsection 1 may order that there be segregated and set aside investments that in the conservator's judgment are of slow or doubtful value or that, on account of unusual conditions, cannot be converted into cash at their full fair value.

A. Pursuant to the conservator's segregation order, the clerk or treasurer of the financial institution shall withdraw all investments so segregated and the then book value of the investments from the list of investments and book values of assets as shown on the books of the financial institution. [ 2005, c. 83, §7 (NEW) . ]

B. The clerk or treasurer of the financial institution shall make and keep a complete and accurate list of the investments segregated under this subsection, their book values and any other records with respect to the investments as the superintendent or conservator may from time to time prescribe. [ 2005, c. 83, §7 (NEW) . ]

As used in this subsection, "investment" or "investments" includes all assets of the financial institution, whether real or personal.

[ 2005, c. 83, §7 (NEW) . ]

**3. Deposit reductions.** Simultaneously with the reductions taken pursuant to subsection 2, the following actions must be taken by the financial institution.

A. In the case of a mutual financial institution or cooperative financial institution, each deposit standing in that financial institution must be reduced so as to divide pro rata among the depositors or members the aggregate book value of all investments segregated under subsection 2. After the order under subsection 2 has been delivered, a depositor or member may not demand or receive on account of a deposit more than the amount remaining to the credit of the deposit after the reduction has been made, and dividends must be computed only on the amounts so remaining, except as otherwise provided in this section. The treasurer or clerk of that financial institution shall withdraw the sum of any deposit reductions from the statements of the amounts due to depositors or members and enter the reductions on individual passbooks as they are presented. The investments and amounts due depositors or members then remaining with changes thereafter made in a usual course of business are deemed to be the investments held by and deposits standing in that financial institution for the purpose of taxation and all other purposes, except as elsewhere provided in this chapter. [ 2005, c. 83, §7 (NEW) . ]

B. In the case of an investor-owned financial institution, if the liabilities of that financial institution, excluding the outstanding equity interest, exceed its assets, the deficit, after making due allowances for priorities, must be divided pro rata among the depositors and each account charged with its proportionate share of the deficit. A depositor is entitled to withdraw the amount of the depositor's account as fixed and determined in the amounts and at the times the conservator, with the prior written approval of the superintendent, directs. That financial institution shall issue to each depositor a certificate showing the amount of the deficit charged to the depositor's account. The certificate is negotiable and may not bear interest. No dividend, profit, withdrawal or distribution may be made thereafter in liquidation of equity interests in that financial institution until the certificates have been paid in full with interest compounded at the rate of 3% per year; otherwise, the certificates may not be deemed to be a liability of that financial institution. [ 2005, c. 83, §7 (NEW) . ]

C. Nothing in this subsection permits a conservator or the superintendent to reduce deposits or accounts insured by a federal corporation pursuant to section 422 without written approval of the federal corporation. [ 2005, c. 83, §7 (NEW) . ]

[ 2005, c. 83, §7 (NEW) . ]

**4. Sale of segregated investments.** Investments segregated under subsection 2 may be sold or exchanged for other securities or investments by a vote of the members of the governing body of the financial institution but must be sold when so ordered by the conservator or the superintendent. All money received

from the sales of or as income from the securities or investments must be entered into a special account and held by the financial institution for the benefit of the depositors or members whose deposits were reduced under subsection 3, to be disposed of as provided in subsection 5.

[ 2005, c. 83, §7 (NEW) . ]

**5. Repayment of reductions.** The members of the governing body of a financial institution from time to time may, and when directed by the superintendent shall, declare pro rata dividends of money received as provided in subsection 4 to be distributed among the depositors or members whose deposits were reduced under subsection 3, payable to those who would then have been entitled to receive the sums deducted if the sums had continued to be included in the reduced deposits, and payable as other dividends are paid.

A. Any depositor or member whose deposit was reduced, any holder of a certificate issued pursuant to subsection 3, paragraph B or the financial institution may file a complaint with the superintendent after one year from the date of the reduction for an order of distribution whenever the condition of the financial institution, taking into account the rights of creditors and of preferred stockholders, if any, warrants the payment. [ 2005, c. 83, §7 (NEW) . ]

B. The superintendent may at any time declare the repayment under paragraph A to be final. [ 2005, c. 83, §7 (NEW) . ]

[ 2005, c. 83, §7 (NEW) . ]

**6. Conservator continuing business.** The conservator may continue to operate the financial institution in accordance with the following conditions and limitations.

A. All depositors, members and investors of the financial institution may continue to make payments to the financial institution in accordance with the terms and conditions of their contracts. [ 2005, c. 83, §7 (NEW) . ]

B. The conservator may set aside and make available for withdrawal by depositors or members and payment to other creditors on a ratable basis the amounts as in the opinion of the superintendent may safely be used for that purpose. [ 2005, c. 83, §7 (NEW) . ]

C. The conservator may receive deposits under the following limitations. The deposits:

(1) May not be subject to any limitation as to payment or withdrawal;

(2) Must be segregated;

(3) May not be used to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the financial institution existing at the time the conservator was appointed; and

(4) Must be kept in cash or invested in direct obligations of the United States or deposited with another financial institution. [ 2005, c. 83, §7 (NEW) . ]

[ 2005, c. 83, §7 (NEW) . ]

**7. Replacement conservator.** The superintendent may, without notice or hearing, replace a conservator with another conservator.

[ 2005, c. 83, §7 (NEW) . ]

**8. Termination of conservatorship.** The superintendent by order may terminate the conservatorship according to this subsection.

A. The superintendent may terminate the conservatorship at the superintendent's discretion. [ 2005, c. 83, §7 (NEW) . ]

B. Any interested party may petition the superintendent for termination of the conservatorship 6 months following appointment of the conservator. [ 2005, c. 83, §7 (NEW) . ]

C. Upon termination of the conservatorship, the powers and duties of the conservator appointed pursuant to subsection 1 cease. [ 2005, c. 83, §7 (NEW) . ]

D. Upon termination of the conservatorship:

(1) The financial institution is returned to its governing body and operates as if the conservator had not been appointed; or

(2) A receiver is appointed as provided in section 365. [ 2005, c. 83, §7 (NEW) . ]

A certified copy of any order discharging the conservator and returning the financial institution to its governing body is sufficient evidence of termination of conservatorship.

[ 2005, c. 83, §7 (NEW) . ]

**9. Immunity from civil liability.** A person serving as a conservator is immune from any civil liability for acts performed within the scope of the conservator's duties in the same manner and to the same extent as employees of governmental entities are under the Maine Tort Claims Act.

[ 2005, c. 83, §7 (NEW) . ]

**9-A. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a conservator for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a conservator for the financial institution.

[ 2009, c. 228, §5 (NEW) . ]

**10. Judicial review.** Any person affected adversely by any act or omission of the superintendent or conservator under this section or section 367-A may bring an action in the Superior Court of Kennebec County seeking an order annulling, altering or modifying the act or enjoining the performance of the act or requiring action to be taken under any provision of this section.

A. The proceedings may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious. Only the financial institution may bring an action challenging the superintendent's order establishing the conservatorship. The court must uphold the superintendent's order establishing the conservatorship and the appointment of a conservator unless the court finds that the superintendent's action was unlawful or arbitrary and capricious. [ 2011, c. 559, Pt. A, §6 (AMD) . ]

B. The person must bring the action under paragraph A within 10 business days after receiving notice of the act or omission in person, by registered mail or by publication of a certificate signed by the conservator, by the superintendent or by the president, treasurer or clerk of the financial institution in a newspaper of general circulation in the county where the financial institution has its principal office. [ 2005, c. 83, §7 (NEW) . ]

C. Notwithstanding paragraph B, action may not be brought more than 30 days after the order of the superintendent under subsection 8. [ 2005, c. 83, §7 (NEW) . ]

D. The court may issue injunctions to prevent multiplicity of proceedings seeking to annul, alter or modify the actions of the superintendent or the conservator made under the provisions of this chapter or to prevent undue interference with the regulation and conservation of the financial institution. [ 2005, c. 83, §7 (NEW) . ]

E. The court, upon application by the superintendent or conservator, has jurisdiction to enforce orders relating to the conservatorship and the financial institution in conservatorship. [2005, c. 83, §7 (NEW) .]

F. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does not apply to the procedures described in this subsection. [2005, c. 83, §7 (NEW) .]

[ 2011, c. 559, Pt. A, §6 (AMD) .]

#### SECTION HISTORY

2005, c. 83, §7 (NEW). 2009, c. 228, §5 (AMD). 2011, c. 559, Pt. A, §6 (AMD) .

### §364. VOLUNTARY LIQUIDATION

**1. Application to court.** Whenever, in the opinion of the superintendent and a majority of the governing body of any financial institution or in the opinion of 3/4 of its depositors, members or investors or more if required by the institution's organizational documents, it is inexpedient for any reason for the institution to continue the further prosecution of its business, the governing body may join with the superintendent in an application to the Superior Court for liquidation of the affairs of the institution, or the depositors, members or investors may file such an application with the concurrence of the superintendent.

[ 1999, c. 218, §19 (AMD) .]

**2. Injunction to restrict payments.** Upon presentation of such application, the court may issue an injunction wholly or partially restraining further payment of deposits until further order of court.

[ 1975, c. 500, §1 (NEW) .]

**3. Order to liquidate.** If, after notice and hearing on application, the court is of the opinion that it is inexpedient for the institution to continue the further prosecution of its business, it may make orders and decrees as seem proper for liquidation of the institution's affairs, distribution of its assets, protection of its depositors, members and investors, if any, and the welfare of the community.

[ 1997, c. 398, Pt. H, §3 (AMD) .]

**4. Liquidation proceedings.** Further proceedings on such application may be in the manner provided for liquidation of an insolvent financial institution, or the court may authorize the chief executive officer, president and governing body of such institution then in office to liquidate its affairs under direction of the court.

[ 1997, c. 398, Pt. H, §3 (AMD) .]

**5. Applicability of section 362.** Section 362 is made applicable to such applications.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §H3 (AMD). 1999, c. 218, §19 (AMD) .

## §365. INSOLVENCY LIQUIDATION

### 1. Injunction against insolvent institution.

[ 1991, c. 34, §5 (RP) .]

**1-A. Appointment of receiver.** If, upon examination of a financial institution, the superintendent is of the opinion that it is insolvent or that its condition renders its further proceedings hazardous to the public or to those having funds including trust assets in its custody, the superintendent may order the institution closed and appoint a receiver who shall proceed to liquidate the financial institution.

[ 2005, c. 83, §8 (AMD) .]

### 2. Powers of receivers. Receivers have the following powers.

A. The person appointed by the superintendent as a receiver may be the superintendent, a deputy, or such other person, including the corporation insuring the institution's accounts pursuant to section 422, as the superintendent may choose; and a certified copy of the order making such appointment is evidence thereof. A receiver has the power and authority provided in this Title, and such other powers and authority as may be expressed in the order of the superintendent. [1991, c. 34, §5 (AMD) .]

B. If the superintendent or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses as a receiver must be paid by the institution. If another person is so appointed, then the compensation of the receiver must be paid from the assets of that institution. [1991, c. 34, §5 (AMD) .]

C. If the federal corporation insuring the institution's deposits or accounts pursuant to section 422 accepts an appointment as receiver, that corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary for that corporation to perform its duties as receiver or as may be necessary under applicable federal law to effectuate that appointment. [1991, c. 34, §5 (AMD) .]

[ 1991, c. 34, §5 (AMD) .]

**3. Specific powers of receivers.** Upon taking possession of the property and business of a financial institution under this section, the receiver:

A. May collect money due to the institution and do all acts necessary to conserve its assets and business, and shall proceed to liquidate its affairs; [1991, c. 34, §5 (AMD) .]

B. Shall collect all debts due and claims belonging to the institution and may sell or compound all bad or doubtful debts; [1991, c. 34, §5 (AMD) .]

C. May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the institution; [1991, c. 34, §5 (AMD) .]

D. May take, in the name of the institution, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price; and [1991, c. 34, §5 (AMD) .]

E. May borrow money and issue evidence of indebtedness therefor. To secure the repayment of same, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. [1991, c. 34, §5 (AMD) .]

F. [1991, c. 34, §5 (RP) .]

G. [1991, c. 34, §5 (RP) .]

Whenever the federal corporation insuring the institution's deposits or accounts pursuant to section 422 pays or makes available for payment the insured deposit liabilities of an institution, such corporation shall become subrogated to the rights of all depositors of the institution, whether or not it has become receiver thereof, in the same manner and to the same extent as it would be subrogated in the liquidation of a financial institution operating under a federal charter and insured by such corporation.

[ 1991, c. 34, §5 (AMD) . ]

**4. Reports of receiver; legal advice.**

[ 1991, c. 34, §5 (RP) . ]

**5. Distribution of assets: stock institution.**

[ 1991, c. 34, §5 (RP) . ]

**6. Distribution of assets: mutual institution.**

[ 1991, c. 34, §5 (RP) . ]

**7. Attachments dissolved; actions discontinued; judgment recovered added to claims.**

[ 1991, c. 34, §5 (RP) . ]

**8. Untimely claims barred.**

[ 1991, c. 34, §5 (RP) . ]

**9. Unknown depositors.** When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there are remaining in the receiver's hands funds due depositors who can not be found and whose heirs or legal representatives are unknown, the unclaimed funds must be disposed of according to Title 33.

[ 1991, c. 34, §5 (AMD) . ]

**10. Procedures in liquidation.** When the superintendent appoints the FDIC as receiver, federal law prescribes the procedures that the FDIC follows in liquidation of the insolvent institution. When an insolvent institution is liquidated, assets must be distributed in the following priority:

A. First, the payment of the costs and expenses of the liquidation; [1991, c. 386, §11 (NEW) . ]

B. Second, the payment of claims for deposits, including, but not limited to, the claims of depositors in a mutual institution for the return of their deposits; [1991, c. 386, §11 (NEW) . ]

C. Third, the payment of all debts, claims and obligations owed by the institution and not accorded priority pursuant to paragraphs A and B; [1991, c. 386, §11 (NEW) . ]

D. Fourth, the payment of claims otherwise proper that were not filed within the prescribed time; and [1991, c. 386, §11 (NEW) . ]

E. Fifth, the payment of any obligation expressly subordinated to deposits and to claims entitled to the priority established by paragraphs A and B. [1991, c. 386, §11 (NEW) . ]

Any funds remaining must be divided among the investors in an investor-owned institution according to their respective interests or, in the case of a mutual institution, pro rata among the depositors in proportion to the respective amount of their deposits.

Interest must be given the same priority as the claim on which it is based, but interest may not be paid on any claim until the principal of all claims within the same class and all higher-priority classes has been paid or adequately provided for in full.

[ 1997, c. 398, Pt. H, §5 (AMD) .]

**11. Immunity from civil liability.** A person serving as a receiver is immune from any civil liability, in the same manner as and to the same extent as employees of governmental entities are under the Maine Tort Claims Act, for acts performed within the scope of the receiver's duties.

[ 2005, c. 83, §9 (NEW) .]

**12. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a receiver for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a receiver for the financial institution.

[ 2009, c. 228, §6 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 707, §1 (AMD). 1991, c. 34, §5 (AMD). 1991, c. 386, §11 (AMD). 1997, c. 398, §H4 (AMD). 1997, c. 398, §H5 (AMD). 2005, c. 83, §§8,9 (AMD). 2009, c. 228, §6 (AMD).

### **§366. MUTUAL INSTITUTIONS: INSOLVENCY; BYLAWS** **(REPEALED)**

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 34, §6 (RP).

### **§367. ADDITIONAL AUTHORITY IN CONSERVATION AND LIQUIDATION** **(REPEALED)**

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 771, §111 (AMD). 1991, c. 34, §7 (RP).

### **§367-A. ADDITIONAL AUTHORITY IN CONSERVATION AND LIQUIDATION**

**1. Attachments and preferences.** The superintendent or a conservator or receiver may bring an action:

A. To dissolve all attachments on the property of a financial institution made within 4 months before the appointment made under section 363-A or 365; [2005, c. 83, §10 (NEW) .]

B. To void as a preference any transfer made after, or in contemplation of, the appointment under section 363-A or 365; and [2005, c. 83, §10 (NEW) .]

C. To discontinue all actions pending against the financial institution. [2005, c. 83, §10 (NEW) .]

[ 2005, c. 83, §10 (NEW) .]



**2. Injunctions.** Whenever proceedings are instituted under this chapter, the Superior Court may issue an injunction restraining all persons from proceeding against the financial institution described in section 363-A or 365 until termination of conservatorship or final liquidation, including trustee processes.

[ 2005, c. 83, §10 (NEW) .]

**3. Other authority.** The superintendent, conservator or receiver may disaffirm or repudiate any contract or lease to which the financial institution is a party, fix the rights of the claimants and adjudicate and fix the time and mode of payment of all claims, accounts and deposits having priority.

[ 2005, c. 83, §10 (NEW) .]

**4. Proceedings generally.** The superintendent, conservator or receiver may bring an action described in this chapter, or any other action as determined appropriate, in the county in which the financial institution is located or has its principal place of business or in the Superior Court of Kennebec County. The proceedings may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[ 2011, c. 559, Pt. A, §7 (AMD) .]

**5. Powers of superintendent.** The superintendent has the following powers.

A. The superintendent may take any actions necessary to carry out the terms and provisions of this chapter. [2005, c. 83, §10 (NEW).]

B. All powers conferred under this chapter on the superintendent are in addition to the powers otherwise conferred upon the superintendent by law. [2005, c. 83, §10 (NEW).]

C. The superintendent may adopt rules for the purpose of carrying out provisions of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 83, §10 (NEW).]

[ 2005, c. 83, §10 (NEW) .]

**6. Mergers.** The conservator or receiver, with the approval of the superintendent, may order the merger or consolidation of any financial institution that is described in section 363-A or 365 with any other financial institution, state-chartered or federally chartered, with the consent of the other financial institution and may prescribe the mode or procedure for the merger or consolidation and the terms and conditions of the merger or consolidation.

[ 2005, c. 83, §10 (NEW) .]

#### SECTION HISTORY

2005, c. 83, §10 (NEW). 2011, c. 559, Pt. A, §7 (AMD).

## §368. ADDITIONAL AUTHORITY IN LIQUIDATION

**1. Rulemaking.** The superintendent may adopt rules to carry out this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1997, c. 398, Pt. H, §6 (AMD) .]

**2. Expenses.** All expenses of the superintendent or the superintendent's assistants incurred in carrying out this chapter must be paid out of the assets of the financial institution in connection with which the expenses were incurred.

[ 1991, c. 34, §8 (NEW) .]

#### SECTION HISTORY

1991, c. 34, §8 (NEW). 1997, c. 398, §H6 (AMD).

### §368-A. FDIC; ACQUISITION OF STOCK

The superintendent may waive the provisions of section 1013 and section 1015 when an equity interest is issued to or acquired by the FDIC in settlement of any liability, fixed or contingent, of a financial institution to the FDIC or in connection with the insolvency or liquidation of the financial institution. [1997, c. 398, Pt. H, §7 (AMD).]

#### SECTION HISTORY

1993, c. 538, §3 (NEW). 1997, c. 398, §H7 (AMD).

### §369. JUDICIAL REVIEW

**1. Action by financial institution.** A financial institution closed by action of the superintendent pursuant to this chapter may bring an action challenging the superintendent's appointment of a receiver in the Superior Court of Kennebec County within 10 days after the superintendent appoints a receiver.

The court must uphold the superintendent's finding that a financial institution is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody and must uphold the appointment of a receiver unless the court finds that the superintendent's action was arbitrary and capricious.

[ 2009, c. 228, §7 (NEW) .]

**2. Action by person adversely affected.** Except when the Federal Deposit Insurance Corporation is appointed receiver and conducts a receivership under federal law, a person affected adversely by an act or omission of the superintendent or receiver under this section and sections 365, 367-A and 368 may bring an action in the Superior Court of Kennebec County seeking an order to annul, alter or modify the act or to enjoin the performance of the act or to require that action be taken under any provision of this section.

A. Any proceedings under this section may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious.

[2011, c. 559, Pt. A, §8 (AMD).]

B. The person must bring the action under this subsection within 10 business days after receiving notice of the act or omission in person, by registered mail or by publication of a certificate signed by the superintendent or receiver in a newspaper of general circulation in the county where the financial institution has its principal office. [2009, c. 228, §7 (NEW) .]

C. Notwithstanding paragraph B, action may not be brought more than 30 days after the order of the superintendent determining that the business affairs of the receivership are substantially complete and that the receivership is terminated. Upon termination of the receivership, the superintendent is under no obligation to reopen the receivership. [2009, c. 228, §7 (NEW) .]

D. The court may issue injunctions to prevent multiplicity of proceedings seeking to annul, alter or modify the actions of the superintendent or receiver made under the provisions of this chapter or to prevent undue interference with the regulation and liquidation of the financial institution. [2009, c. 228, §7 (NEW) .]

E. The court, upon application by the superintendent or receiver, has jurisdiction to enforce orders relating to the receivership and the financial institution in receivership. [2009, c. 228, §7 (NEW) .]

F. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does not apply to the procedures described in this subsection. [2009, c. 228, §7 (NEW) .]

[ 2011, c. 559, Pt. A, §8 (AMD) .]

#### SECTION HISTORY

1991, c. 34, §8 (NEW). 2009, c. 228, §7 (RPR). 2011, c. 559, Pt. A, §8 (AMD) .

## Chapter 37: INTERSTATE BRANCHING, MERGERS, CONSOLIDATIONS AND ACQUISITIONS

### §371. APPLICABILITY OF CHAPTER; FEES

**1. Applicability.** The provisions of this chapter govern de novo establishment of interstate branches, interstate combinations and interstate branch acquisitions undertaken by a financial institution, out-of-state financial institution, federal association or national bank.

[ 1995, c. 628, §20 (NEW) .]

**2. Fees.** An application or notice required under this chapter is not complete unless accompanied by a fee payable to the Treasurer of State to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee according to the requirements of section 373; the fee may not exceed \$2,500.

[ 1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW) .

### §372. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 628, §20 (NEW) .]

**1. De novo branch.** "De novo branch" means a branch of a financial institution, out-of-state financial institution, federal association or national bank, that is originally established by the financial institution as a branch and does not become a branch of that financial institution as a result of the acquisition by the financial institution of a financial institution or the acquisition of a branch of a financial institution or through the conversion, merger or consolidation with that institution or branch.

[ 1995, c. 628, §20 (NEW) .]

**2. Interstate branch acquisition.** "Interstate branch acquisition" means the purchase of one or more branches of a financial institution, out-of-state financial institution, federal association or national bank whose home state is different from the home state of the acquiring financial institution, out-of-state financial institution, federal association or national bank and the transfer of any branches so acquired into branches of the acquiring financial institution, out-of-state financial institution, federal association or national bank.

[ 1995, c. 628, §20 (NEW) .]

**3. Interstate combination.** "Interstate combination" means the merger, acquisition or consolidation of financial institutions, out-of-state financial institutions, federal associations or national banks, that have different home states when the branches of the acquired financial institution, out-of-state financial institution, federal association, or national bank become branches of the resulting financial institution, out-of-state financial institution, federal association or national bank.

[ 1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW).

## §373. INTERSTATE COMBINATIONS, BRANCH ACQUISITIONS AND DE NOVO ESTABLISHMENTS

**1. Authority.** Interstate combinations are expressly authorized subject to the provisions of this chapter. Interstate branch acquisition and establishment of de novo branches are expressly authorized subject to the provisions of this chapter; however, the law of jurisdiction of any out-of-state financial institution, federal association or national bank proposing to establish or acquire one or more branches in this State must expressly authorize, under conditions no more restrictive than those imposed by the laws of this State as determined by the superintendent, the financial institution, federal association or national bank whose home state is this State to engage in interstate branch acquisition or establishment of de novo branches in that state.

[ 1995, c. 628, §20 (NEW); 1995, c. 628, §38 (AFF) .]

**2. Application requirements.** When the resulting financial institution of any interstate combination, interstate branch acquisition or de novo branch establishment is a financial institution organized under the laws of this State, that financial institution must obtain prior approval of the superintendent before participating in the transaction. The application for the superintendent's approval must be filed in the form and manner prescribed by the superintendent in accordance with this chapter and chapters 33 and 35, as applicable. The superintendent shall approve or disapprove an application under this section in accordance with the requirements of section 252 and the superintendent may condition approval of the application, as necessary, to conform with the criteria set forth in section 253.

[ 1995, c. 628, §20 (NEW) .]

**3. Notice requirements.** When the resulting financial institution of any interstate combination, branch acquisition or de novo branch establishment is an out-of-state financial institution, federal association or national bank with a home state that is not this State, that out-of-state financial institution, federal association or national bank must provide prior notice to the superintendent before participating in the transaction. Notice to the superintendent must:

- A. Be in a form and contain that information prescribed by the superintendent, including, but not limited to, proof of compliance with this chapter, as applicable; [1995, c. 628, §20 (NEW) .]
- B. Be provided no later than 3 days after the date of filing an application for that transaction with the appropriate state or federal regulatory agency; [1995, c. 628, §20 (NEW) .]
- C. Include a copy of any application filed with the appropriate state or federal regulatory agency; and [1995, c. 628, §20 (NEW) .]
- D. Include payment of the fee pursuant to section 371. [1995, c. 628, §20 (NEW) .]

The superintendent shall provide written response within 30 days of receipt of the notice. If the superintendent finds that the interstate combination, acquisition or establishment does not comply with applicable state law, including, but not limited to, the conditions and requirements of this chapter, the superintendent may file an objection with the appropriate state or federal regulatory agency that has primary responsibility for the

applicant. In addition, if the superintendent finds that an interstate combination, branch acquisition or de novo establishment would be adverse to the public interest, the superintendent may bring an action in the name of the State pursuant to chapter 24.

[ 1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW). 1995, c. 628, §38 (AFF).

### §374. AUTHORITY FOR EXPEDITED TRANSACTIONS

Notwithstanding any other provision of law, or any charter, certificate of organization, articles of association, articles of incorporation or bylaw of any participating institution, the superintendent may order that an interstate combination or branch acquisition pursuant to section 373, subsection 1 become effective immediately, if the superintendent determines that the action is necessary for the protection of depositors, shareholders or the public. A person aggrieved by an interstate combination or branch acquisition pursuant to this section is entitled to judicial review of the superintendent's order in accordance with Title 5, chapter 375, subchapter VII. [1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW) .

### §375. APPLICABLE CONCENTRATION LIMITS

Any interstate combination or branch acquisition authorized pursuant to this chapter is subject to the deposit concentration limitations set forth in section 241, subsection 10. [1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW) .

### §376. ACTIVITIES OF INTERSTATE BRANCHES

**1. Branches of financial institutions organized under the laws of this State.** Pursuant to this chapter, a financial institution organized under the laws of this State that establishes and operates a branch in another state may conduct any activity at that branch that is permissible for a financial institution organized under the laws of the "host state" as defined in section 131, subsection 20-B. The financial institution shall provide prior written notice of the branch activity to the superintendent if the activity is not permissible in this State.

[ 1995, c. 628, §20 (NEW) .]

**2. Branches of out-of-state financial institutions.** The laws of this State, including, but not limited to, the laws regarding consumer protection, fair lending and establishment of intrastate branches, apply to any state branch of an out-of-state financial institution, federal association or national bank to the same extent as those laws apply to a state branch of a financial institution organized under the laws of this State. An out-of-state financial institution that maintains, or seeks to establish and maintain, a branch in this State pursuant to this chapter may not conduct any activity at that branch that is not permissible for a financial institution organized under the laws of this State.

[ 1995, c. 628, §20 (NEW) .]

**3. Commercial activity prohibited.** An out-of-state financial institution may not establish or maintain a branch in this State within 1.5 miles of any location of an affiliate where the affiliate engages in commercial activity.

[ 2007, c. 69, §3 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW). 2007, c. 69, §3 (AMD).

## §377. CORPORATE FILING REQUIREMENTS

**1. Applicability of Title 13-C.** An out-of-state financial institution, federal association or national bank with a home state other than this State that seeks to establish and operate a branch in this State as the result of an interstate combination, branch acquisition or de novo establishment pursuant to this chapter shall comply with the filing requirements for foreign corporations under Title 13-C. The approval of the filing of an out-of-state financial institution, federal association or national bank by the Secretary of State does not authorize the operation of a branch in this State by an out-of-state financial institution, federal association or national bank until the notice required pursuant to subsection 2 has been filed.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §13 (COR) .]

**2. Notice to the superintendent required.** An out-of-state financial institution, federal association or national bank is not authorized to do business in this State pursuant to this chapter until copies of the documents filed with the Secretary of State pursuant to Title 13-C have been received by the superintendent.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §13 (COR) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B13 (COR).

## §378. EFFECTIVE DATE

This chapter takes effect January 1, 1997. [1995, c. 628, §20 (NEW) .]

#### SECTION HISTORY

1995, c. 628, §20 (NEW).

## Part 4: POWERS AND DUTIES OF FINANCIAL INSTITUTIONS

### Chapter 41: GENERAL POWERS

#### §411. APPLICABILITY OF CHAPTER

The provisions of this chapter set forth the powers granted to all financial institutions organized pursuant to chapters 31 and 32. The powers, privileges, duties and restrictions conferred and imposed in the charter or act of incorporation of any trust company, savings bank or savings and loan association organized under the prior laws of this State are abridged, enlarged or modified so that every such charter or act of incorporation conforms to this Title. Notwithstanding anything in a charter or act of incorporation of such an institution, every such institution possesses the powers, rights and privileges and is subject to the duties, restrictions and liabilities conferred and imposed by this Title. [1997, c. 398, Pt. I, §1 (AMD).]

##### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §11 (AMD).

#### §412. GENERAL CORPORATE POWERS

A financial institution organized under chapter 31 or 32 shall have the power: [1975, c. 500, §1 (NEW).]

1. To exist perpetually or as provided for in its organizational documents;

[ 1997, c. 398, Pt. I, §2 (AMD) .]

2. To sue and be sued in its corporate name, and to participate in any judicial, administrative, arbitral or other proceeding;

[ 1975, c. 500, §1 (NEW) .]

3. To adopt and alter a corporate seal, and to use the same or a facsimile thereof;

[ 1975, c. 500, §1 (NEW) .]

4. To elect, appoint or hire officers, agents and employees of the institution, and to define their duties and fix their compensation;

[ 1975, c. 500, §1 (NEW) .]

5. To make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this State for the administration and regulation of the affairs of the institution;

[ 1975, c. 500, §1 (NEW) .]

6. To cease its corporate activities and surrender its corporate franchise;

[ 1975, c. 500, §1 (NEW) .]

7. To make donations irrespective of corporate benefit for any charitable, philanthropic, scientific, educational, civic betterment or public welfare purpose, as a majority of the directors shall deem appropriate;

[ 1975, c. 500, §1 (NEW) .]

**8.** To establish and carry out pension plans, pension trusts, profit sharing plans, stock option plans, stock bonus plans and other incentive plans for any or all of its directors, officers, and employees; and to pay pensions and similar payments to its directors, officers or employees, and their families;

[ 1975, c. 500, §1 (NEW) .]

**9.** To reimburse, indemnify and purchase liability insurance for directors, officers, and employees as provided in Title 13-C, chapter 8, subchapter 5; and

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §14 (COR) .]

**10.** To join the Federal Reserve System or the Federal Home Loan Bank or any cooperative league or other entity organized for the purpose of protecting and promoting the welfare of financial institutions and their depositors; and to comply with all conditions of membership therein.

[ 1997, c. 398, Pt. I, §2 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §12 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B14 (COR).

## §412-A. CAPITAL

**1. Requirement.** Every financial institution shall establish and maintain adequate levels of capital as set forth in rules adopted by the superintendent. These rules must address, at a minimum, composition of capital, capital levels that must be maintained and procedures that must be followed to restore capital if it becomes impaired or falls below the minimum standards. Minimum capital levels established by the superintendent may be no less stringent than those applicable to federally chartered institutions with similar charters.

[ 1991, c. 34, §8 (NEW) .]

**2. Exception.** The superintendent may approve, in writing, capital levels below the required minimum as considered necessary or appropriate under the particular circumstances of a financial institution.

[ 1991, c. 34, §8 (NEW) .]

### **3. Notification.**

[ 2005, c. 82, §8 (RP) .]

**3-A. Approval.** Any issuance considered as capital under subsection 1 or under rules adopted under subsection 1 must be submitted to the superintendent for the superintendent's approval at least 10 days prior to issuance and include any documentation the superintendent considers necessary.

[ 2005, c. 82, §9 (NEW) .]

#### SECTION HISTORY

1991, c. 34, §8 (NEW). 1997, c. 398, §13 (AMD). 2005, c. 82, §§8,9 (AMD).

## §413. BORROWING

A financial institution may borrow money on such terms and conditions as it may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage, pledge or other encumbrance of all or any part of its property. [1997, c. 398, Pt. I, §4 (AMD).]



**1. Capital notes or debentures.**

[ 1997, c. 398, Pt. I, §5 (RP) .]

**2. Mortgage-backed securities.**

[ 1997, c. 398, Pt. I, §6 (RP) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §19 (AMD). 1997, c. 22, §11 (AMD). 1997, c. 398, §§14-6 (AMD).

**§414. DEPOSITS IN FINANCIAL INSTITUTIONS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §17 (RP).

**§415. PARTICIPATION IN PUBLIC AGENCIES**

To the extent authorized by the superintendent pursuant to regulations, a financial institution has the power to participate in a public agency created under the laws of this State or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions, depositors or investors and to comply with all requirements and conditions imposed upon such participants. [1997, c. 398, Pt. I, §8 (AMD) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §18 (AMD).

**§416. POWERS OF FEDERALLY CHARTERED INSTITUTIONS**

Notwithstanding any other provisions of law, a financial institution has the power to engage in any activity that financial institutions chartered by or otherwise subject to the jurisdiction of the Federal Government may be authorized to engage in by federal legislation or regulations issued pursuant to such legislation. In the event any law of this State is preempted or declared invalid pursuant to applicable federal law, by a court of competent jurisdiction or by the responsible federal chartering authority with respect to any power that may be exercised by a financial institution chartered by or otherwise subject to the jurisdiction of the Federal Government, that law is invalid with respect to financial institutions authorized to do business in this State. The superintendent may adopt rules to ensure that such powers are exercised in a safe and sound manner with adequate consumer protections. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 207, §1 (AMD) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 207, §1 (AMD).

**§417. EQUITY INTEREST IN MAINE FINANCIAL INSTITUTIONS**

A financial institution authorized to do business in this State may acquire more than 5% of the equity interest of any other financial institution authorized to do business in this State or of a Maine financial institution holding company with the prior approval of the superintendent. [1997, c. 398, Pt. I, §9 (AMD) .]

## SECTION HISTORY

1983, c. 55, §1 (NEW). 1983, c. 597, §1 (AMD). 1997, c. 398, §19 (AMD).

## §418. ACTING AS AGENT

A financial institution or a financial institution not authorized to do business in this State may act as agent for a financial institution, out-of-state financial institution, a financial institution organized under provisions of law of another state, federal association or national bank in accordance with this section.  
[1995, c. 628, §21 (NEW).]

**1. Activities.** A financial institution acting as agent may receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations. The list of permitted agency activities may be expanded through rulemaking. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1995, c. 628, §21 (NEW) .]

**2. Limitations on activities.** The agreement to act as agent must limit the activities to those specifically permitted under this section or as expanded through rulemaking. The institution acting as agent pursuant to an agency agreement may not be considered a branch of the contracting institution, nor is the contracting institution considered a branch of the institution acting as agent.

[ 1995, c. 628, §21 (NEW) .]

**3. Notice required.** A financial institution entering into an agency agreement shall file notice with the superintendent, in the form and manner prescribed by the superintendent, prior to engaging in the activities permitted under this section.

[ 1995, c. 628, §21 (NEW) .]

**4. Relationship terms.** An agency relationship between institutions must be on terms that are consistent with safe and sound banking practices and the superintendent may adopt rules to supplement the requirements of this section.

[ 1995, c. 628, §21 (NEW) .]

### SECTION HISTORY

1995, c. 628, §21 (NEW).

## §419. INVESTMENT POWERS

**1. Investment and equity securities.** A financial institution is authorized to purchase, sell, underwrite and hold investment securities and equity securities, consistent with safe and sound banking practices. For purposes of this section, the term "investment securities" includes credit instruments such as commercial paper, banker's acceptances, certificates of deposit, repurchase agreements and overnight federal funds, in addition to marketable obligations in the form of bonds, notes, debentures or other similar instruments that are commonly regarded as investment securities. A financial institution's holding of equity securities is limited to 100% of its total capital unless a higher limit is authorized by the superintendent. The purchase of speculative securities or equities is prohibited, except that a financial institution may make venture capital investments up to 20% of the institution's total capital unless a higher limit is authorized by the superintendent.

[ 1997, c. 398, Pt. I, §10 (NEW) .]

**2. Written investment policy.** A financial institution's governing body shall establish a written investment policy, which it shall review and ratify at least annually, that addresses, at a minimum, the following:

A. Investment quality parameters; [1997, c. 398, Pt. I, §10 (NEW) .]

B. Investment mix and diversification; [1997, c. 398, Pt. I, §10 (NEW).]

C. Investment maturities; and [1997, c. 398, Pt. I, §10 (NEW).]

D. Delegation of authority to officers and committees responsible for administering the portfolio.  
[1997, c. 398, Pt. I, §10 (NEW).]

[ 1997, c. 398, Pt. I, §10 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §110 (NEW).

### §419-A. PROPERTY OWNERSHIP

In addition to real estate owned for offices and facilities pursuant to chapter 33, a financial institution may acquire all property, real, personal and mixed, by mortgage foreclosure, purchase or by any other means and may hold the property for investment purposes and may improve, develop, lease, contract, convey and otherwise exercise control over the property. [1997, c. 398, Pt. I, §10 (NEW).]

#### SECTION HISTORY

1997, c. 398, §110 (NEW).

## Chapter 42: DEPOSITS IN GENERAL

### §421. APPLICABILITY OF CHAPTER; TAX EXEMPTION

**1. Applicability.** The sections of this chapter govern deposits or accounts in financial institutions subject to the provisions of this Title.

[ 1997, c. 398, Pt. I, §11 (AMD) .]

**2. Tax exemption.** All interest-bearing deposits or accounts of whatever type in financial institutions subject to the provisions of this Title are exempt from municipal taxation to said institution, and to the depositors or members of such institution.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §111 (AMD).

### §421-A. GENERAL DEPOSIT POWERS

Unless otherwise prohibited by state law, a financial institution may establish the types and terms, including the minimum and maximum amounts that it may accept and the frequency and computation method of paying interest, of deposits that it solicits and accepts. A financial institution may refuse deposits at its pleasure and a financial institution may pledge or hypothecate any of its assets as security for deposits. [1997, c. 398, Pt. I, §12 (NEW).]

#### SECTION HISTORY

1997, c. 398, §112 (NEW).

## §422. INSURANCE OF DEPOSITS OR ACCOUNTS

**1. Requirement.** A financial institution organized under the laws of this State or a branch of an out-of-state financial institution authorized to do business in this State shall take any action necessary to have its deposits or accounts insured by the FDIC. For purposes of this section, a branch of an out-of-state financial institution does not include a branch of a foreign bank that is not eligible for insurance of accounts by the FDIC.

[ 1997, c. 398, Pt. I, §13 (AMD) .]

**2. Transition period.**

[ 1981, c. 155, §1 (RP) .]

**3. Failure to obtain insurance.**

[ 1981, c. 155, §1 (RP) .]

**4. Applicable law.** A financial institution that has its deposits or accounts insured pursuant to this section shall comply with all statutes and regulations governing the insurance of deposits or accounts by the FDIC. This section may not be construed as repealing, modifying or impairing any powers, duties, rights or responsibilities under the provisions of this Title of the superintendent or of the financial institution so insured.

[ 1997, c. 398, Pt. I, §13 (AMD) .]

**5. Exception.** A financial institution organized pursuant to Part 12 is not required to have its deposits or accounts insured by the FDIC.

[ 1997, c. 398, Pt. I, §13 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 670, (AMD). 1977, c. 621, (AMD).  
1981, c. 155, §1 (AMD). 1995, c. 628, §22 (AMD). 1997, c. 398, §13 (AMD).

## §422-A. CASH RESERVES ON DEPOSITS AND ACCOUNTS

**1. Requirement.** A financial institution organized under the laws of this State and a credit union organized under the laws of this State shall maintain reserves on deposits or accounts as required from time to time by the Federal Reserve Act, Section 19(b), as amended, and any regulations promulgated under it; except that the amount of reserves shall be 100% of the requirements, notwithstanding the Federal Reserve Act, Section 19(b)(8) of that Act.

[ 1981, c. 155, §2 (NEW) .]

**2. Transition period.** Reserves held by a financial institution or credit union to meet the requirements of this section must be in the form prescribed by the Federal Reserve Act, Section 19(c), as amended, and any regulations promulgated under it.

A. [1997, c. 398, Pt. I, §14 (RP).]

B. [1997, c. 398, Pt. I, §14 (RP).]

C. [1997, c. 398, Pt. I, §14 (RP).]

D. [1997, c. 398, Pt. I, §14 (RP).]

[ 1997, c. 398, Pt. I, §14 (AMD) .]

**3. Assessment for deficiency.** Any deficiency in the cash reserve established pursuant to this section may be subject to an assessment for such period of time as the deficiency may exceed 2% of the required reserves. Any such penalty may be assessed at a rate not to exceed 10% per year.

[ 1981, c. 155, §2 (NEW) .]

**4. Failure to make up deficiency.** If any financial institution or credit union fails to make up a reserve deficiency with a corresponding excess reserve in the reserve computation period immediately following the period in which the deficiency occurred, the superintendent may declare that no loans or investments be made except those loans secured by deposit accounts or investments made in bonds or other obligations issued by the United States or any of its instrumentalities, or issued or guaranteed by this State or issued by any of its instrumentalities, agencies or political subdivisions which is not in default on any of its outstanding funded obligations.

[ 1981, c. 155, §2 (NEW) .]

**5. Reports.** The superintendent may require any financial institution or credit union to furnish such reports as he deems appropriate to properly supervise compliance with the requirements of this section.

[ 1981, c. 155, §2 (NEW) .]

#### SECTION HISTORY

1981, c. 155, §2 (NEW). 1997, c. 398, §114 (AMD).

### §423. DEMAND DEPOSITS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 155, §3 (AMD). 1981, c. 198, (AMD).  
1981, c. 553, §2 (AMD). 1981, c. 709, (AMD). 1983, c. 34, (AMD). 1997,  
c. 398, §115 (RP).

### §424. NOW ACCOUNTS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§19-A (AMD). 1981, c. 155, §4  
(AMD). 1997, c. 398, §116 (RP).

### §425. COMPUTATION OF DIVIDENDS AND INTEREST ON DEPOSITS AND ACCOUNTS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §117 (RP).

## §426. SAVINGS DEPOSITS OR ACCOUNTS: WRITTEN NOTICE OF WITHDRAWAL

**1. Withdrawal notice may be required.** A financial institution may at any time, by resolution of its governing body, require written notice by a savings depositor not to exceed 90 days prior to the repayment of deposits or accounts, or may require similar notice before repaying deposits in excess of \$50, or certain classes of savings deposits or accounts.

[ 1997, c. 398, Pt. I, §18 (AMD) .]

**2. Deposit not payable during waiting period.** In the event such notice is required, no such deposit or account shall be due or payable during the required period after the notice shall have been given. If not withdrawn within 15 days after the expiration of the required period following notice, such deposit or account shall not be due and payable under that notice.

[ 1975, c. 500, §1 (NEW) .]

**3. Deposits prior to expiration of waiting period.** The institution may receive any deposit or deposits before expiration of the required period, subject to such regulations as may be imposed by the superintendent.

[ 1975, c. 500, §1 (NEW) .]

**4. Interest earned until actual withdrawal.** The written notice of withdrawal required pursuant to this section does not constitute a withdrawal from the deposit or account until the amounts noticed have been actually withdrawn by the depositor giving such written notice, and interest is earned on these amounts for the period prior to actual withdrawal.

[ 1997, c. 398, Pt. I, §18 (AMD) .]

### 5. Exception.

[ 1997, c. 398, Pt. I, §19 (RP) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §§118,19 (AMD).

## §427. DEPOSIT OR ACCOUNT TRANSACTIONS

**1. Minor's deposits or accounts.** Money deposited in the name of a minor is his property, and a financial institution may, in the discretion of the officer making or authorizing the payment, pay the same to such minor, to his order or to his guardian. The receipt of such minor, or his guardian, for any such payment is a valid release and shall discharge the institution.

[ 1975, c. 500, §1 (NEW) .]

### 2. Fiduciary deposits or accounts.

A. Whenever a deposit is made in trust, the name and address of the person for whom it is made, or the purpose for which the trust is created, shall be disclosed in writing to the institution, and the deposit shall be credited to the depositor as trustee for such person or purpose. [1975, c. 500, §1 (NEW) .]

B. Whenever a deposit is made by a person designated on the records of a financial institution as a fiduciary, it shall be conclusively presumed, in all dealings between the institution and the fiduciary or any other persons with respect to such deposit, that such fiduciary has power to invest money in the institution, and to withdraw the same or any part thereof, and to transfer his deposit to any other person.

The receipt or acquittance of such fiduciary shall fully exonerate and discharge the institution from all liability to any person having any interest in such deposit and the institution shall not be under any duty to see to the proper application of the trust property. [1979, c. 540, §8 (AMD).]

C. Subject to the provisions of Title 18-A, section 6-111, upon the death or disability of any fiduciary, the value of such deposit or account may be paid, at the option of the institution, and in the absence of notice of the existence and terms of a trust, either to the executor, administrator, conservator or guardian of such fiduciary, or to any substituted fiduciary, or to the person, if any, who is designated on the records of the institution as the beneficiary of such deposit, if of the age of 15 years or upwards, or to the guardian or parent or person standing in loci parentis to such person if under the age of 15 years. Subject to the provisions of Title 18-A, section 6-112, the receipt or acquittance of any such person shall fully exonerate and discharge the institution from all liability to any person having any interest in such deposit, and the institution shall not be under any duty to see to the proper application of the trust property. [1979, c. 540, §9 (AMD).]

[ 1979, c. 540, §§8, 9 (AMD) .]

### **3. Fiduciary transactions by check.**

A. If a check drawn or endorsed by a fiduciary is received by a drawee financial institution, including a check for payment in cash or for the personal credit of such fiduciary, such institution may assume, without inquiry, that the fiduciary has acted within the scope of his authority. [1975, c. 540, §1 (NEW) .]

B. As used in this subsection, "fiduciary" includes a trustee under any trust, express or implied, resulting or constructive, or an executor, administrator, guardian, conservator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer or any other person acting in a fiduciary capacity for any person, trust or estate. "Person" includes 2 or more persons having a common interest. For the purposes of this subsection, such institution may rely upon, though it need not require, a writing certified by the clerk or secretary of a corporation as to such officer. [1975, c. 540, §1 (NEW).]

C. Nothing contained in this subsection shall be deemed to modify or otherwise affect Title 11, section 1-201, subsection 25 or Title 11, section 3-304, nor to relieve such institution from any liability imposed upon it by law to the extent of any payment or amount which such institution may receive for its benefit from any of such checks or funds represented thereby. [1975, c. 540, §1 (NEW).]

[ 1975, c. 540, §1 (NEW) .]

### **4. Joint deposits or accounts.**

A. When a deposit has been made or shall hereafter be made in any financial institution authorized to do business in this State in the names of 2 or more persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or the interest or dividends thereon may be paid to any or either of said persons, whether the other or others be living or not, or to the legal representative of the survivor of said persons if proofs of death are presented to the financial institution showing that the decedent was the last surviving party or if there is clear and convincing evidence that no right of survivorship was intended at the time the account was created. Subject to the provisions of Title 18-A, section 6-112, the receipt or acquittance of the persons to whom said payment is so made shall be a valid and sufficient release and discharge to such financial institution for any payment so made. [1979, c. 540, §10 (AMD).]

B. All such deposits or accounts, whenever opened or issued, payable to either or the survivor including interest and dividends, in the name of the same persons in any financial institution within this State shall, in the absence of fraud or undue influence, upon the death of one of such persons, become the property of the parties as provided in Title 18-A, section 6-104. [1979, c. 540, §11 (AMD).]

[ 1979, c. 540, §§10, 11 (AMD) .]

**5. Pledge of joint deposits or accounts.** The pledge of all or part of a deposit or account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the deposit or account shall, unless the terms of the deposit or account provide specifically to the contrary, be a valid pledge and transfer of that part of the deposit or account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the deposit or account.

[ 1975, c. 500, §1 (NEW) .]

**6. Power of attorney over deposits or accounts.** Any financial institution may continue to recognize the authority of an attorney authorized in writing to manage or to make withdrawals either in whole or in part from the account of a depositor until it receives written notice of the revocation of his authority. For the purposes of this subsection, written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney. No institution shall be liable for damages by reason of any payment made pursuant to this subsection.

[ 1975, c. 500, §1 (NEW) .]

**7. Transfer of deposit or account.** A depositor may transfer, absolutely or conditionally, that depositor's deposit or account to any other person, subject to any provisions affecting such deposit or account pursuant to this chapter by a written assignment in a form approved by the institution, accompanied by delivery of the evidence of the deposit or account. Evidence of the deposit or account means the membership certificate, share certificate, account book, passbook or any other evidence of the deposit or account that has been issued in connection with such deposit or account. Every such transfer of a deposit or account is considered to include the deposit or account and the evidence of the deposit or account issued in connection with the deposit or account. An absolute transfer is not effective against an institution until such written assignment and the accompanying evidence of the deposit or account are delivered to the institution with a request that it complete such transfer upon its records. A conditional transfer is not effective against an institution unless and until it actually receives notice of the conditional transfer in writing.

This subsection does not apply to the creation, perfection or enforcement of a security interest in a deposit or account other than an assignment of a deposit or account in a consumer transaction as defined in Title 11, section 9-1102, subsection 26.

[ 2001, c. 211, §11 (AMD) .]

**8. Payment of decedent's deposit or account.**

A. Except as provided in paragraph B, if any depositor shall die leaving in a financial institution a deposit or account on which the balance due him shall not exceed \$1,000, and no personal representative shall be appointed, the institution may pay the balance of such deposit or account to the surviving spouse, next of kin, funeral director or other preferred creditor or creditors who may appear to be entitled thereto. For any payments so made, the institution shall not be held liable to the decedent's personal representative thereafter appointed unless the payment shall have been made within 6 months after the decedent's death and an action to recover the amount shall have been commenced within one year after the date of payment. [1979, c. 540, §12 (NEW) .]

B. Notwithstanding the provisions of paragraph A, upon presentation of an affidavit under Title 18-A, section 3-1201, a financial institution shall pay the balance of any deposit or account left by a deceased depositor to the depositor's successor under the provisions of Title 18-A, sections 3-1201 and 3-1202. Such payments under this paragraph shall take precedence over payments under paragraph A to the extent of the balance of the deposits or accounts of the deceased depositor at the time the affidavit is presented. [1979, c. 540, §12 (NEW) .]

[ 1979, c. 540, §12 (RPR) .]

**9. Lost evidences of deposits or accounts.**



A. If a financial institution receives a notice in writing that an account book or passbook or other evidence of a deposit or account issued by said institution is lost, together with a request that a duplicate evidence of deposit or account be issued, such notice and request being signed by the appropriate person or persons as provided, the institution, at the expiration of a period of 10 days from the receipt of such notice if the missing evidence is not sooner presented, may issue a duplicate evidence of deposit or account to the person or persons signing said notice and request, and the delivery of such duplicate evidence shall relieve the institution from all liability on account of the missing original evidence of deposit or account. Such notice and request shall be signed in the following manner:

(1) If the evidence of deposit or account was issued to a single depositor, then by him, an officer in the event of a corporation, or by a guardian, conservator, trustee, executor or administrator; or

(2) If the evidence of deposit or account was issued to 2 or more depositors, then by all such depositors then surviving, or by the last survivor of such depositors; provided that a guardian or conservator shall sign for any of the foregoing persons respecting whom he has been appointed. [1979, c. 663, §41 (AMD) .]

B. If a depositor shall lose a nonnegotiable certificate of deposit or certificate of account, paragraph A shall apply, except that the depositor shall provide an affidavit in writing to the institution, in lieu of the notice provided for in paragraph A, stating that such certificate issued by the institution is lost and could not be found after thorough search. [1987, c. 402, Pt. A, §87 (AMD) .]

[ 1987, c. 402, Pt. A, §87 (AMD) .]

**10. Adverse claim to deposit or account.** Except as provided in Title 11, section 4-405, in Title 14, section 4751 and in Title 18-A, sections 6-107 and 6-112, notice to a financial institution authorized to do business in this State of an adverse claim to a deposit or account standing on its books to the credit of any person is not effectual to cause that institution to recognize the adverse claimant, unless the adverse claimant either procures a restraining order, injunction or other appropriate process against the institution from a court of competent jurisdiction in a civil action to which the person to whose credit the deposit or account stands is made a party or executes to that institution, in a form and with sureties acceptable to the institution, a bond indemnifying the institution from all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of checks or other orders of the person to whose credit the deposit or account stands on the books of the institution.

This subsection does not apply to the creation, perfection or enforcement of a security interest in a deposit or account other than an assignment of a deposit or account in a consumer transaction as defined in Title 11, section 9-1102, subsection 26.

[ 2007, c. 88, §1 (RPR) .]

**11. Payment of orders.** Any financial institution may pay any order drawn by any person who has funds on deposit to meet the same, notwithstanding the death of the drawer in the interval of time between signing such order and its presentation for payment, when said presentation is made within 30 days after the date of such order; and at any subsequent period, provided the institution has not received actual notice of the death of the drawer.

[ 1975, c. 500, §1 (NEW) .]

**12. Superintendent's authority to permit withdrawals.** Except as expressly limited by other provisions of this Title, the superintendent may authorize a financial institution or institutions to permit the withdrawal of funds on deposit by depositors, account holders or members of said institution or institutions, in such manner or by such methods as the superintendent may determine appropriate under the circumstances.

[ 1995, c. 628, §23 (AMD) .]

**13. Notice on opening certain accounts.** A signature card or other document establishing a multiple-party account, as defined in Title 18-A, section 6-101, shall contain a clear and conspicuous printed notice to the depositor that on his death the balance in the account will belong to the surviving party.

[ 1979, c. 540, §13-A (NEW) .]

**14. Applicability.** This section applies to financial institutions authorized to do business in this State and credit unions authorized to do business in this State.

[ 2003, c. 322, §15 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 571, §1 (AMD). 1975, c. 733, §1 (AMD). 1975, c. 770, §51 (AMD). 1979, c. 540, §§8-13-A (AMD). 1979, c. 663, §41 (AMD). 1987, c. 402, §A87 (AMD). 1995, c. 628, §23 (AMD). 1999, c. 218, §20 (AMD). 2001, c. 211, §§11,12 (AMD). 2003, c. 322, §15 (AMD). 2007, c. 88, §1 (AMD).

### §428. INACTIVE DEPOSITS OR ACCOUNTS

All moneys in unclaimed accounts in each financial institution authorized to do business in this State must be disposed of according to Title 33, chapter 41. [2001, c. 211, §13 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 771, §112 (AMD). 1977, c. 707, §2 (RPR). 2001, c. 211, §13 (AMD).

### §429. RESIDENTIAL MORTGAGE ESCROW ACCOUNTS

**1. Definition.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Escrow account" means any account established by agreement between a mortgagor and mortgagee under which the mortgagor pays to the mortgagee sums to be used to pay taxes or insurance premiums. [1983, c. 679, §2 (RPR).]

B. "Mortgagee" means any financial institution authorized to do business in this State, as defined in section 131, subsection 17-A, any credit union authorized to do business in this State, as defined in section 131, subsection 12-A, any supervised lender, as that term is defined in Title 9-A, section 1-301, subsection 39, and their assignees. [1983, c. 679, §2 (RPR).]

[ 1983, c. 679, §2 (RPR) .]

**2. Payment of interest or dividends.** Each mortgagee holding funds of a mortgagor in a required escrow account on behalf of itself or another mortgagee for the payment of taxes or insurance premiums with respect to mortgaged property located in this State shall pay the mortgagor, at least quarterly, dividends or interest on the account at a rate of not less than 50% of the 1-year Treasury Note rate or rate of a comparable instrument if the 1-year Treasury Note is not offered, as published in a financial newspaper of national circulation, as of the first business day of the year in which the quarterly interest or dividend is paid. The dividends or interest paid under this subsection may not be reduced by any charge for service or maintenance of the account.

[ 2003, c. 263, §2 (AMD) .]

**3. Computing and crediting interest.** Under subsection 2, interest must be computed on the daily balances in the account from the date of receipt to the date of disbursement and must be credited to the account as of the last business day of each quarter of a calendar or fiscal year. If such an account is closed or discontinued before the last business day of a quarter of a calendar or fiscal year, interest must be computed and credited as of the day the account is closed or discontinued. For the purposes of calculating interest under subsection 2, the mortgagee may take into account debit balances resulting from advances and may elect to compute interest on the basis of the actual number of days in each quarter and year, or on the basis of a 30-day month and a 360-day year. At least once a year, the mortgagee shall give the mortgagor a statement showing the interest credited on the escrow account during the period that the statement covers.

[ 2003, c. 263, §2 (AMD) . ]

**4. Scope.** The requirements of this section apply only to mortgages on owner-occupied residential property consisting of not more than 4 dwelling units, located in this State.

[ 1983, c. 679, §2 (RPR) . ]

**5. Exemptions.** This section does not apply to mortgage transactions under which the payment of interest on escrow accounts is prohibited by federal law.

[ 1983, c. 679, §2 (RPR) . ]

**6. Application.** The requirements of this section shall apply to any funds in an escrow account on October 1, 1985, and to any funds deposited in an escrow account after that date.

[ 1985, c. 327, (AMD) . ]

#### SECTION HISTORY

1979, c. 426, (NEW). 1983, c. 679, §2 (RPR). 1985, c. 327, (AMD).  
2003, c. 263, §2 (AMD).

## Chapter 43: LOANS IN GENERAL

### §431. APPLICABILITY OF CHAPTER

The sections of this chapter govern loans made by financial institutions subject to the provisions of this Title. [1997, c. 398, Pt. I, §20 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I20 (AMD).

### §431-A. LOAN POWERS

**1. General loan authority.** Unless otherwise prohibited by state law, a financial institution may make, sell, purchase, arrange, participate in, invest in or otherwise deal in loans or extensions of credit, as defined in section 439-A, for any purpose.

[ 1997, c. 398, Pt. I, §21 (NEW) . ]

**2. Written loan policy.** A financial institution's governing body shall establish a written loan policy, which must be reviewed and ratified at least annually, that addresses at a minimum, the following:

A. Individual lending officer authority; [1997, c. 398, Pt. I, §21 (NEW).]

B. Loan mix and diversification; [1997, c. 398, Pt. I, §21 (NEW).]

C. Loan quality parameters; and [1997, c. 398, Pt. I, §21 (NEW).]

D. Delegation of authority to officers and committees responsible for administering the portfolio.  
[1997, c. 398, Pt. I, §21 (NEW).]

[ 1997, c. 398, Pt. I, §21 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §121 (NEW).

## §432. INTEREST ON LOANS

**1. Interest absent in writing.** The maximum legal rate of interest on a loan made by a financial institution, in the absence of an agreement in writing establishing a different rate, shall be 6 percent per year.

[ 1975, c. 500, §1 (NEW) .]

### **2. Interest: noncommercial or consumer loans.**

A loan made by a financial institution which is secured by a first mortgage on real estate shall not be within the interest limitations set forth in Title 9-A; provided that the security interest in real estate is not given for purpose of evading said Title 9-A.

A. The legal rate of interest, whether set forth in writing or not, on a noncommercial or consumer loan, shall be established in accordance with and subject to the limitations set forth in Title 9-A. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §433. FAIR CREDIT EXTENSION

Every financial institution authorized to do business in this State shall be subject to and shall comply with the provisions of Title 5, sections 4595 to 4598 providing for the fair extension of credit by lenders in this State. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §434. LOAN PARTICIPATIONS AND PURCHASES

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 785, §1 (AMD). 1997, c. 398, §122 (RP).

## §435. MINORITY OF BORROWER

**1. Limitation on disability.** The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the Act of Congress entitled the "Servicemen's Readjustment Act", 38 U.S.C. § 1801 et seq., as amended, and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said Act of Congress, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including

incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the Government or the Administrator of Veterans' Affairs pursuant to said Act and amendments thereto; or if the Administrator be the creditor, by reason of a loan or a sale pursuant to said Act and amendments.

[ 1975, c. 500, §1 (NEW) . ]

**2. No additional rights.** This section shall not create, or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse was a minor.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §436. OPEN-END MORTGAGES

**1. Authorization; requirements.** Any interest in real property which may be mortgaged to a financial institution authorized to do business in this State may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security and to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage; and all such debts, obligations and future advances, from and as of the time the mortgage is filed for record as provided by law, shall be secured by such mortgage and have priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate. A mortgage securing future advances remains valid and retains its priority even if no funds have been advanced or all advances have been repaid so long as an agreement regarding advances remains in effect. Upon termination of the agreement regarding future advances and repayment of all advances, the mortgage shall be discharged. Such priority over subsequent persons shall be only to the extent that the aggregate amount outstanding at any one time of such debts, obligations and future advances does not exceed the total amount stated in the mortgage; except that:

A. The mortgagor or his successor in title is authorized to file for record, and the same shall be recorded in the same recording office as the original mortgage, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount actually advanced at the time of such filing; provided that a copy of such filing is filed with the mortgagee; and [ 1975, c. 500, §1 (NEW) . ]

B. The priority of such debts, obligations and future advances shall not include any future optional advances secured by such mortgage made by such institution after any such person, in addition to acquiring such subsequent right or lien, sends to the institution by registered mail or delivers to an officer of the institution and secures a receipt therefor, express written notice stating that any such optional advances thereafter made will be junior to such person's mortgage or lien upon or rights in such real estate. [ 1975, c. 500, §1 (NEW) . ]

[ 1985, c. 647, §7 (AMD) . ]

**2. Future advances.** "Future advances" referred to in subsection 1 shall include only those made to recipients designated in the mortgage.

[ 1975, c. 500, §1 (NEW) . ]

**3. Applicability limited.** The provisions of this subsection may not be construed to affect or otherwise change the present law that allows mortgages stating nominal or no consideration to secure existing debts or obligations, or debts or obligations created simultaneously with the execution of the mortgage, to the extent of

the actual debts or obligations, existing or granted; but such mortgages, when not also expressly providing for future advances to be made at the option of the parties, may not afford security for any future advances except those necessary to protect the security.

[ 1991, c. 2, §23 (COR) .]

**4. Exemption.** This section does not apply to mortgages that are recorded on or after January 1, 1994.

[ 1993, c. 229, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 647, §7 (AMD). RR 1991, c. 2, §23 (COR). 1993, c. 229, §1 (AMD).

### §437. REPAYMENT OF NONCOMMERCIAL AND CONSUMER LOANS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §123 (RP).

### §438. FEDERAL FUNDS LOANS OR SALES

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §9 (AMD). 1997, c. 398, §124 (RP).

### §439. ATTORNEYS

*(REPEALED)*

#### SECTION HISTORY

1979, c. 531, (NEW). 1983, c. 150, §2 (AMD). 1985, c. 311, §6 (RP).

### §439-A. LENDING LIMITS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Loans or extensions of credit" includes all direct or indirect advances of funds to a person that are made on the basis of any obligation of that person to repay the funds or that are repayable from specific property pledged by or on behalf of the person. "Loans or extensions of credit" may include, to the extent specified by the superintendent, any liability of a financial institution to advance funds to or on behalf of a person pursuant to a contractual commitment. [1991, c. 34, §8 (NEW) .]

B. "Person" has the same meaning as defined in section 131, subsection 30. In determining loan limitations pursuant to subsection 2, the superintendent may further define "person," including, through rulemaking, the establishment of standards regarding the aggregation of loans with respect to related persons. [1991, c. 34, §8 (NEW) .]

[ 1991, c. 34, §8 (NEW) .]

**2. Limitations.** A financial institution subject to this Title or a service corporation established pursuant to section 445 may not make loans or extensions of credit outstanding at one time to a person in excess of 20% of its total capital. Except as provided in paragraph A, total loans or other extensions of credit in excess

of 10% of total capital must be approved by a majority of the governing body or the executive committee of that institution or corporation. Any loan made in violation of this section is subject to the remedies prescribed in section 465-A.

A. The superintendent may grant a partial or full waiver of the voting requirement for loans or other extensions of credit in excess of 10% of total capital for good cause shown. In granting this waiver, the superintendent shall consider capital, management and resources of the financial institution or other relevant factors as determined by the superintendent. [1999, c. 205, §1 (NEW).]

B. Any waiver granted pursuant to paragraph A may be withdrawn by the superintendent upon written notice to the financial institution. [1999, c. 205, §1 (NEW).]

[ 1999, c. 205, §1 (AMD) .]

**3. Exclusions from limitations.** The limitations contained in subsection 2 are subject to the following exceptions:

A. Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse; [1991, c. 34, §8 (NEW).]

B. Loans or extensions of credit to municipal corporations located within this State upon their bonds or notes; [1991, c. 34, §8 (NEW).]

C. Loans or extensions of credit to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or purchase the loans or extensions of credit, made by any Federal Reserve Bank, the United States, this State or any department, bureau, board, commission, agency, authority, instrumentality or establishment of the United States or this State, including any corporation owned directly or indirectly by the United States or this State; [1991, c. 34, §8 (NEW).]

D. Loans or extensions of credit secured by a segregated deposit account in the lending bank; [1991, c. 34, §8 (NEW).]

E. Obligations as endorser, with or without recourse, or as guarantor, conditional or unconditional of dealer-originated obligations; and [1991, c. 34, §8 (NEW).]

F. Sales of federal funds, interbank deposits, which do not include certificates of deposit, and clearings. [1991, c. 34, §8 (NEW).]

[ 1991, c. 34, §8 (NEW) .]

**4. Record of directors' actions.** When loans in excess of 10% of total capital are approved, the records of the financial institution or service corporation must show who voted in favor of the loan. These records and those required by section 222 constitute prima facie evidence of the truth of all facts stated in the records in prosecutions and civil actions to enforce the provisions and penalties under section 465-A.

[ 1991, c. 681, §1 (AMD) .]

**5. Rulemaking.** The superintendent may adopt rules to administer and carry out this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section if the superintendent determines that such action is necessary for the protection of depositors, investors or the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1997, c. 398, Pt. I, §26 (AMD) .]

#### SECTION HISTORY

1991, c. 34, §8 (NEW). 1991, c. 681, §1 (AMD). 1997, c. 398, §§125,26 (AMD). 1999, c. 205, §1 (AMD).

## Chapter 44: SERVICES AND INCIDENTAL ACTIVITIES

### §441. APPLICABILITY OF CHAPTER

The provisions of this chapter govern the services and incidental activities offered by financial institutions. [1997, c. 398, Pt. I, §27 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §127 (AMD).

### §441-A. GENERAL POWERS

Unless otherwise prohibited or limited by this Title or rules adopted by the superintendent, a financial institution has and may exercise all powers necessary or convenient to effect the purposes for which the financial institution is organized or to further the businesses in which the financial institution is lawfully engaged. [1997, c. 398, Pt. I, §28 (NEW).]

#### SECTION HISTORY

1997, c. 398, §128 (NEW).

### §442. TRUSTEE, SELF-EMPLOYMENT RETIREMENT PLANS

**1. Authorization; limitation.** Financial institutions may act as trustee under a retirement plan established pursuant to the Act of Congress entitled "Self-employed Individuals Retirement Act of 1962," as amended; an individual retirement arrangement pursuant to the "Employee Retirement Income Security Act of 1974," as amended; a simplified employee pension plan pursuant to the "Revenue Act of 1978," as amended; or any similar qualified retirement plan pursuant to federal law. This section in no way limits the authority granted to trust departments of financial institutions.

[ 1997, c. 398, Pt. I, §29 (AMD) .]

**2. Loss of status as qualified plan.** In the event that any such retirement plan, which in the judgment of the institution constitutes a qualified plan under either said Self-employed Individuals Retirement Act of 1962; the Employee Retirement Income Security Act of 1974; a simplified employee pension plan pursuant to the "Revenue Act of 1978," as amended; or any similar qualified retirement plan pursuant to federal law, and the regulations promulgated thereunder at the time the trust or account was established and accepted by the institution, is determined subsequently not to be such a qualified plan or ceases subsequently to be such a qualified plan, in whole or in part, the institution may nevertheless continue to act as trustee of any deposit theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof.

[ 1985, c. 588, §2 (AMD) .]

**3. Segregation not required.** No institution, with respect to the deposits made under this section, shall be required to segregate such deposits from its other deposits except as may be required under federal law establishing such plans; provided that the institution shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 39, (AMD). 1985, c. 588, §§1,2 (AMD). 1997, c. 398, §129 (AMD).



## §443. SERVICES FOR CUSTOMERS

In addition to all customer services financial in nature or incidental to, reasonably related to or convenient and useful to the powers granted in its organizational documents, a financial institution authorized to do business in this State may offer the services set forth below to its customers, depositors or members. [1997, c. 398, Pt. I, §30 (AMD).]

### 1. Checks, money orders and travelers' checks.

[ 1997, c. 398, Pt. I, §31 (RP) .]

### 2. Safe deposit boxes.

[ 1997, c. 398, Pt. I, §31 (RP) .]

### 3. Safekeeping.

[ 1997, c. 398, Pt. I, §31 (RP) .]

### 4. Consumer financial counseling.

[ 1997, c. 398, Pt. I, §31 (RP) .]

### 5. Public collection agency.

[ 1997, c. 398, Pt. I, §31 (RP) .]

### 6. Participation in public lotteries.

[ 1997, c. 398, Pt. I, §31 (RP) .]

**7. Authorized insurance.** A financial institution, while acting as a creditor may make insurance available to the extent authorized by Titles 9-A and 24-A. In so doing, a financial institution which makes life insurance available pursuant to Title 24-A, section 2604-A, where the indebtedness is secured to the creditor by a mortgage on real estate and where a separate charge is made to the debtor for that insurance, shall make the insurance available jointly to the debtor and not more than one comaker of the indebtedness, provided that both are individually and jointly liable to repay the indebtedness. The foregoing shall not be deemed to restrict the insurer's right to require all debtors to meet the requirements of the applicable policy in order to become insured. Nothing in this subsection shall prohibit the insurance on the life of one debtor only, if desired by the debtor.

[ 1981, c. 175, §1 (AMD) .]

### 8. Clearing corporation.

[ 1997, c. 398, Pt. I, §32 (RP); 1997, c. 683, Pt. B, §2 (RP) .]

### 9. Acting as agent.

[ 1997, c. 398, Pt. I, §32 (RP) .]

### 10. Bills or drafts.

[ 1997, c. 398, Pt. I, §32 (RP) .]

**11. Annuities.** A financial institution, credit union or financial institution holding company, or a subsidiary or employee of such an entity, authorized to do business in the State may sell, or arrange for the sale of, through a licensed 3rd party, annuities purchased from a licensed insurance company and may share commissions in connection with the sale of annuities pursuant to the provisions of Title 24-A. A financial institution, a credit union or a financial institution holding company, or an employee or subsidiary of such an entity, must be licensed in accordance with Title 24-A, section 1411 or 1416 before engaging in any of the activities concerning the sale of annuities authorized by this subsection.

A financial institution, credit union or financial institution holding company that sells or arranges for the sale of annuities on the premises of that entity:

A. Shall post conspicuously a notice that is clearly visible to all customers that may purchase annuities. The notice must state in clearly understandable language that the annuities are not insured by the Federal Deposit Insurance Corporation; [1997, c. 683, Pt. B, §3 (RPR).]

B. Shall orally inform a prospective purchaser of annuities that the annuities are not insured by the Federal Deposit Insurance Corporation; and [1997, c. 683, Pt. B, §3 (RPR).]

C. Before a sale of annuities is completed, shall obtain a written statement signed by the purchaser of the annuities stating that the purchaser received the oral notice required by paragraph B. [1997, c. 683, Pt. B, §3 (RPR).]

[ 1997, c. 683, Pt. B, §3 (RPR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 667, §1 (AMD). 1981, c. 175, §1 (AMD). 1987, c. 405, §1 (AMD). 1993, c. 322, §1 (AMD). 1997, c. 315, §16 (AMD). 1997, c. 398, §§I30-32 (AMD). 1997, c. 429, §C1 (AMD). 1997, c. 457, §3 (AMD). 1997, c. 683, §§B2,3 (AMD).

## §444. CREDIT CARDS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I33 (RP).

## §445. SERVICE CORPORATIONS

**1. Authorization.** A financial institution may establish, acquire or invest in the equity interest, obligations or other securities of a service corporation, as defined in section 131, or otherwise participate in or utilize the service of such a corporation. A service corporation may be owned by one or more institutions engaged in the business of banking.

[ 2005, c. 82, §10 (AMD) .]

**2. Limitations.** The stock of a service corporation formed pursuant to this section may be owned only by institutions engaged in the business of banking. The maximum amount of investment in any one such service corporation may not exceed 20% of the institution's total capital and reserves or its total surplus account. The aggregate investment of a financial institution in all service corporations may not exceed 50% of its total capital and reserves or its total surplus account. For purposes of applying the legal lending limit prescribed in this Title, a financial institution's investment in a service corporation, if majority owned, must be consolidated with the financial institution on a line-for-line basis proportionate to the financial institution's ownership interest in the service corporation.

[ 1997, c. 22, §13 (AMD) .]

**3. Records.** The books and accounts of a service corporation involving any financial institution shall be kept in such manner and form as the superintendent may prescribe; and any agreement between a financial institution and such corporation shall provide that such books and accounts may be examined by the superintendent or his designee.

[ 1975, c. 500, §1 (NEW) . ]

**4. Ownership.**

[ 1997, c. 22, §14 (RP) . ]

**5. Exception for debt-acquired real property.**

[ 1997, c. 22, §15 (RP) . ]

**6. Application; notice required.** A financial institution seeking to invest in one or more service corporations shall notify the superintendent in writing at least 10 days prior to such investment. A financial institution seeking to establish or acquire one or more service corporations shall seek authorization to do so in accordance with the following.

A. If the services are to be performed only for other financial institutions authorized to do business in this State as defined in section 131, subsection 17-A, the financial institution shall notify the superintendent in writing, at least 10 days in advance, of its intent to establish or acquire the service corporation. This notice must contain information required by the superintendent. [1997, c. 22, §16 (NEW) . ]

B. If the services are to be performed for the public as well as other financial institutions, the financial institution shall file an application in accordance with section 252. The superintendent may, in addition to the criteria set forth in section 253, consider the type of institution making application and the competitive effect of that ownership. [1997, c. 22, §16 (NEW) . ]

An application or notice required by this subsection is not complete unless accompanied by a fee to be credited and used as provided in section 214.

[ 1997, c. 22, §16 (NEW) . ]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1975, c. 666, §§20,21 (AMD). 1983, c. 63, §§3-4 (AMD). 1991, c. 386, §§12-15 (AMD). 1997, c. 22, §12 (AMD). 1997, c. 22, §13 (AMD). 1997, c. 22, §14 (AMD). 1997, c. 22, §15 (AMD). 1997, c. 22, §16 (AMD). 2005, c. 82, §10 (AMD).

**§446. CLOSELY-RELATED ACTIVITIES**

*(REPEALED)*

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1975, c. 666, §§21-A (AMD). 1997, c. 22, §§17,18 (AMD). 1997, c. 398, §134 (RP).

**§446-A. CLOSELY RELATED ACTIVITIES**

A financial institution authorized to do business in this State may engage, directly or indirectly, in closely related activities as defined in section 131, subsection 6-A. The financial institution may engage in those activities directly, or indirectly through a subsidiary, unless the superintendent determines that

an activity must be conducted through a subsidiary with appropriate corporate firewalls and safeguards, as determined by the superintendent, that limit the financial institution's exposure by emphasizing the subsidiary's independent legal structure. [1997, c. 398, Pt. I, §35 (NEW).]

**1. Application required.** A financial institution shall make application to the superintendent in accordance with section 252 for authority to engage in a closely related activity, except that an application is not necessary if all of the following conditions are satisfied:

A. Before and immediately after the proposed transaction, the financial institution is well capitalized as determined by the superintendent; [1999, c. 218, §21 (AMD).]

B. At the time of the transaction, the financial institution is well managed, which means that in connection with the financial institution's most recent examination:

(1) The financial institution received a composite rating of one or 2 pursuant to the uniform financial institution rating system adopted by the Bureau of Financial Institutions; and

(2) The financial institution received at least a satisfactory rating for management; [1999, c. 218, §21 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

C. The book value of the total assets to be acquired does not exceed 15% of the consolidated total risk-weighted assets of the financial institution; [1999, c. 218, §21 (AMD).]

D. The consideration to be paid for the securities or assets to be acquired does not exceed 15% of the consolidated capital of the financial institution; [1999, c. 218, §21 (AMD).]

E. During the 12-month period prior to the proposed transaction, the financial institution has not been under an enforcement action nor is there an enforcement action pending; [1999, c. 218, §21 (AMD).]

F. The financial institution provides written notification to the superintendent at least 30 days prior to consummating the transaction; and [2001, c. 211, §14 (AMD).]

G. The activity is authorized pursuant to this Title or by rule or order of the superintendent. [1997, c. 398, Pt. I, §35 (NEW).]

Notwithstanding paragraphs A and G, the superintendent, after review of the written notification under paragraph F, may require an application if the superintendent determines that the activity raises significant supervisory concerns or raises significant legal or policy issues.

[ 2001, c. 44, §4 (AMD); 2001, c. 211, §14 (AMD) .]

**2. Joint ownership.** A subsidiary corporation formed pursuant to this section may be owned jointly with one or more persons, if the superintendent approves the joint ownership.

[ 1997, c. 398, Pt. I, §35 (NEW) .]

**3. Investment limits.** The amount of investment in any one subsidiary corporation may not exceed 20% of the financial institution's total capital. The aggregate investment in all subsidiary corporations may not exceed 50% of the financial institution's total capital. The superintendent may approve higher limits upon request.

[ 1997, c. 398, Pt. I, §35 (NEW) .]

**4. Application or notice fee.** An application or notice required under subsection 1 is not complete unless accompanied by a fee to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee, which may not exceed \$2,500.

[ 1999, c. 218, §22 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §135 (NEW). 1999, c. 218, §§21,22 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 211, §14 (AMD).

### §447. REAL ESTATE APPRAISALS; COPIES

A financial institution that imposes a fee on a person for the cost of an appraisal of any real estate shall furnish to the person, at no cost, one copy of the appraisal upon request, if the request is made within 90 days after the financial institution has provided notice of action taken on the application for credit or the date of the closing, whichever is later, or 90 days after the application is withdrawn. [1999, c. 150, §8 (AMD) .]

#### SECTION HISTORY

1987, c. 265, §2 (NEW). 1999, c. 150, §8 (AMD).

### §448. INSURANCE AGENCY ACTIVITIES

**1. Authorization.** A financial institution authorized to do business in this State or credit union authorized to do business in this State, or financial institution holding company, or an affiliate of either, other than a licensed supervised lender regulated under Title 9-A, Article IV, Part 4, may act as an insurance producer or consultant in this State and may employ, affiliate with or hire as a 3rd-party agent an insurance producer or consultant, if the producer or consultant is duly licensed under Title 24-A or engages in authorized insurance activities in another state, if the producer or consultant complies with the applicable laws of that state.

[ 1999, c. 218, §23 (AMD) .]

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliate" has the same meaning as defined in Title 24-A, section 1443-A, subsection 1, paragraph A. [1999, c. 127, Pt. A, §22 (AMD) .]

B. "Customer" means a person or business entity or an authorized representative of either who has been personally and directly offered, or presently maintains, an investment security, trust, credit or an insurance product with a financial institution or credit union authorized to do business in this State. [1997, c. 315, §17 (NEW) .]

[ 1999, c. 127, Pt. A, §22 (AMD) .]

**3. Customer notice that insurance is not federally guaranteed.** An institution that engages in insurance agency or brokerage activities authorized under subsection 1 must provide customer notice regarding insurance products in the following manner.

A. The institution shall post conspicuously a notice that is clearly visible to all customers that may purchase insurance products from the institution. The notice must state in clearly understandable language that the insurance is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable; [1997, c. 315, §17 (NEW) .]

B. When a prospective purchaser of insurance is directly and personally contacted by the institution, the institution shall orally inform that prospective purchaser of insurance that the insurance product is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable; and [1997, c. 315, §17 (NEW).]

C. Before the sale of an insurance product is completed the institution must obtain a written statement signed by the purchaser of insurance that the purchaser received the oral notice required by paragraph B. [1997, c. 315, §17 (NEW).]

[ 1997, c. 315, §17 (NEW) .]

**4. Distinguishing insurance products from loan or deposit products; identification of insurance producers.** To the extent practicable, sales of insurance products authorized by this section must take place in a manner that minimizes customer confusion between the deposit, share or loan products offered by the institution and those insurance products. An institution authorized under subsection 1 is in compliance with this subsection if it utilizes signs clearly visible to its customers that distinguish its insurance products from its deposit, share or loan products and that adequately identify insurance producers and consultants affiliated with the institution.

[ 1999, c. 218, §23 (AMD) .]

**5. Rulemaking.** The superintendent, Superintendent of Insurance and the Superintendent of Consumer Credit Protection are authorized, pursuant to this subsection, Title 9-A, section 4-407 and Title 24-A, section 1443-A, subsection 3 to undertake joint rulemaking to carry out the purpose of subsection 4, including issues regarding signs, the physical location of sales of insurance and identification of producers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this section, the superintendent, the Superintendent of Insurance and the Superintendent of Consumer Credit Protection shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among producers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of a producer to solicit or negotiate the sale of an insurance product, whether or not that producer is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists to protect the insurance consuming public. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the bureau, the Bureau of Insurance or the Bureau of Consumer Credit Protection to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

[ 1999, c. 790, Pt. A, §10 (RPR); 2007, c. 273, Pt. B, §§5, 6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

**6. Applicability.** Other than the authorizations provided in subsection 1, this section does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance. This section also does not apply to annuity sales authorized under section 443, subsection 11.

[ 1997, c. 315, §17 (NEW) .]

#### SECTION HISTORY

1997, c. 315, §17 (NEW). 1999, c. 127, §§A22,23 (AMD). 1999, c. 218, §23 (AMD). 1999, c. 790, §A10 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §§5, 6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

## Chapter 45: RECORDS AND REPORTS

### §451. APPLICABILITY OF CHAPTER

The provisions of this chapter apply to financial institutions organized under chapters 31 and 32 and establish minimum record-keeping requirements for these financial institutions. [1997, c. 398, Pt. I, §36 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I36 (AMD).

### §452. MAINTENANCE OF RECORDS; ACCOUNTING AND ASSETS

**1. Safekeeping of assets and records.** Every financial institution shall make provisions to secure the safekeeping of the financial institution's assets and its books, accounts and records and shall keep them separate and apart from the assets or property of others. A financial institution may use the services of other entities when reasonably appropriate to accomplish the duties imposed by this section.

[ 1997, c. 398, Pt. I, §37 (AMD) .]

**2. Books and accounting.** The clerk or treasurer of every financial institution, or such other officer as may be designated in the bylaws or by a duly recorded vote of its directors, shall cause the books and accounts of the financial institution to be kept in accordance with generally accepted accounting principles unless the superintendent otherwise prescribes. The superintendent may prescribe the manner and form of keeping such books and accounts, which need not be uniform.

[ 1997, c. 398, Pt. I, §37 (AMD) .]

#### **3. Assets.**

[ 1997, c. 398, Pt. I, §37 (RP) .]

**4. Fair value.** The superintendent may require any of the assets of a financial institution to be charged down to such sum as in the superintendent's judgment represents its fair value.

[ 1997, c. 398, Pt. I, §37 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I37 (AMD).

### §453. ANNUAL AUDITS

**1. Selection of auditor.** The governing body of a financial institution subject to the provisions of this Title shall employ an independent public accountant or accountants at least annually.

[ 1997, c. 398, Pt. I, §38 (AMD) .]

**2. Duties of the auditor.** The accountant or auditor selected in subsection 1 shall analyze the books, accounts, notes, mortgages, securities and operating systems of the institution in such manner as in his judgment will result in an audit which, together with the internal auditing and accounting procedures of the institution, comports with generally accepted accounting standards for the protection of depositors, members or stockholders and the efficient operation of the institution. The accountant or auditor shall make a written report of the condition of the institution to the president and chairman of the board, for the board, in such manner and to such extent as said accountant or auditor may deem necessary or proper, and said accountant or auditor shall supply such additional information obtained from his audit as the board may direct.

[ 1975, c. 500, §1 (NEW) .]

**3. Superintendent's comment on audit.** The superintendent shall, in the course of his regular official examination of the institution and at such other times as he deems advisable, investigate the work of such accountant or auditor to determine its adequacy for the purposes set forth in subsection 2. In determining the adequacy of such an audit, the superintendent shall take into account the internal auditing and accounting procedures established by such institution. If the superintendent determines that the audit is inadequate, he shall report forthwith his findings, with instructions, in writing to the directors, who shall, within 30 days thereafter, comply therewith.

[ 1975, c. 500, §1 (NEW) .]

**4. Audit limiting liability.** Whenever the directors of a financial institution shall have provided for such audit or audits by the method prescribed and, in the case of the employment, election or appointment of an accountant or auditor by them, shall have taken such action to remedy conditions as may be deemed reasonably necessary in the light of the information disclosed by any report of said accountant or auditor, and shall have complied with all reasonable recommendations of the superintendent relative thereto within the time hereinbefore prescribed, they shall not be personally liable for any loss suffered by such institution due to any subsequent wrongdoing by any officer or employee of the institution, in the absence of other facts indicating negligence on the part of said directors.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I38 (AMD).

## §454. DESTRUCTION OF DEPOSIT RECORDS

Any statement of account rendered by a financial institution to a depositor or any account book or passbook that has been written up by the financial institution to show the condition of the depositor's account and accompanied by vouchers that are the basis for debit entries to the account are deemed finally adjusted and settled and are conclusively presumed to be correct after a period of 6 years from rendition if the depositor has not questioned the correctness of the account. The depositor is thereafter barred from questioning the account. This section may not be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the financial institution and of immediate notification to the financial institution upon discovery of any error in such account, nor from the legal consequences of neglect of such duty, nor to prevent the application of Title 11 to cases governed by Title 11. Accordingly, financial institutions are not required to preserve or keep their records or files relating to these accounts and vouchers for a longer period than 6 years.

[1997, c. 398, Pt. I, §39 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §I39 (AMD).

## Chapter 46: PROHIBITIONS



## §461. APPLICABILITY OF CHAPTER

The provisions of this chapter setting forth acts and practices that are prohibited apply to all financial institutions, universal banks, limited purpose banks, credit unions and financial institution holding companies subject to the laws of this State and are in addition to the prohibitions in this Title. [1999, c. 546, §1 (AMD).]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1999, c. 218, §24 (AMD). 1999, c. 546, §1 (AMD).

## §462. INTERLOCKS OF DIRECTORS, CORPORATORS AND OFFICERS

**1. Prohibited interlocks.** Except as provided in subsections 2 and 3, no person who is a director, corporator, officer or employee of a financial institution, credit union or financial institution holding company authorized to do business in this State shall serve as a director, corporator, officer or employee of any other such financial institution, credit union or financial institution holding company authorized to do business in this State.

[ 1975, c. 500, §1 (NEW) .]

**2. Exceptions.** The prohibitions contained in subsection 1 shall not apply to the situation where directors, officers or employees of subsidiaries of financial institutions and subsidiaries of financial institution holding companies who may also be directors, officers or employees of the parent financial institution holding company, or of other subsidiaries of such holding company.

[ 1975, c. 500, §1 (NEW) .]

**3. Grandfather provision.** The prohibitions contained in subsection 1 shall not apply to any person who is presently serving in such multiple offices until October 3, 1976.

[ 1975, c. 500, §1 (NEW) .]

**4. Waiver.** The superintendent may grant a waiver of the prohibition contained in subsection 1 upon request by an affected party. A waiver may be granted only in situations involving a financial institution, credit union or financial institution holding company and a limited purpose bank and for good cause shown when there is no conflict resulting from competition between institutions. The superintendent may withdraw a waiver granted under this subsection upon reasonable written notice to the affected party.

[ 1999, c. 546, §2 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1999, c. 546, §2 (AMD).

## §463. STOCK IN MAINE FINANCIAL INSTITUTIONS

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §22 (AMD). 1977, c. 152, §3 (AMD). 1979, c. 663, §42 (AMD). 1983, c. 55, §2 (RP).

## §464. LOANS ON SHARES OF STOCK

**1. Prohibition.** A financial institution shall not make loans or discounts on the security of the shares of its own capital stock or the capital stock of its parent holding company or its subsidiaries, if any, nor shall an institution be the purchaser or holder of any such shares unless necessary to prevent loss upon a debt previously contracted for in good faith, and all stock so acquired shall be disposed of at public or private sale within one year after its acquisition, in accordance with such requirements as the superintendent deems appropriate.

[ 1975, c. 500, §1 (NEW) .]

**2. Extension of time for disposition of shares.** The time for disposition of shares acquired in subsection 1 may be extended by the superintendent for good cause shown, upon application in writing to the superintendent.

[ 1975, c. 500, §1 (NEW) .]

**3. Purchase of own shares.** Nothing in this section shall be construed as prohibiting an institution, with the prior written approval of the superintendent, from:

A. Redeeming shares of its capital stock of any type pursuant to provisions of its bylaws or articles of incorporation; [1977, c. 152, §4 (NEW) .]

B. Purchasing shares of its capital stock of any type for the purpose of reducing its outstanding shares pursuant to provisions of its bylaws or articles of incorporation; or [1977, c. 152, §4 (NEW) .]

C. Purchasing shares of any type of its own capital stock or the capital stock of its parent financial institution holding company pursuant to any stock option plan, stock bonus plan or other incentive plan for any or all directors, officers and employees duly adopted by the financial institution's board of directors. [1975, c. 546, §48 (AMD) .]

[ 1977, c. 564, §48 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §4 (AMD). 1977, c. 564, §48 (AMD) .

## §465. LOANS TO DIRECTORS, CORPORATORS OR OFFICERS

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §23 (AMD). 1977, c. 152, §5 (AMD). 1981, c. 501, §§32,33 (AMD). 1981, c. 698, §24 (AMD). 1983, c. 56, §§1-3 (AMD). 1985, c. 83, §§2,3 (AMD). 1987, c. 405, §2 (AMD). 1991, c. 34, §9 (AMD). 1991, c. 681, §2 (RP).

## §465-A. LOANS TO STOCKHOLDERS, DIRECTORS OR OFFICERS

**1. Authorization.** A financial institution authorized to do business in this State may make loans to its principal stockholders, policy-making officers or directors, or to any related interest of those persons, subject to the limitations contained in this section.

[ 1991, c. 681, §3 (NEW) .]

**2. Terms and credit worthiness.** A financial institution may not make a loan to any of its principal stockholders, policy-making officers or directors, or to any related interest of that person, unless the loan is made on substantially the same terms, including interest rates and collateral, as those generally available to the public, or to employees of the financial institution pursuant to a benefit or compensation program, and does not involve more than the normal risk of repayment or present other unfavorable features.

[ 1997, c. 22, §19 (AMD) . ]

**3. Prior approval.** A financial institution may not grant a loan to any of its principal stockholders, policy-making officers or directors, or to any related interest of that person, in an amount that, when aggregated with the amount of all other loans to that person and all related interests of that person, exceeds the higher of \$25,000 or 5% of the financial institution's capital or unimpaired surplus, unless:

A. The loan has been approved in advance by a majority of the entire board of directors of the financial institution; and [1991, c. 681, §3 (NEW) . ]

B. Any interested party has abstained from participating directly or indirectly in the voting. [1991, c. 681, §3 (NEW) . ]

A financial institution may not make a loan to any one of its principal stockholders, policy-making officers or directors, or to any related interest of that person, in an amount that, when aggregated with the amount of all other loans to that person and all related interests of that person, exceeds \$500,000 except in compliance with the requirements of this subsection.

[ 1991, c. 681, §3 (NEW) . ]

**4. Participation in discussion.** Participation by any principal stockholder, policy-making officer or director in the discussion or any attempt to influence the voting by the board of directors regarding a loan to the interested principal stockholder, policy-making officer or director, or any related interest of that person, constitutes indirect participation in the voting by the board of directors on the loan.

[ 1991, c. 681, §3 (NEW) . ]

**5. Lines of credit.** Lines of credit to principal stockholders, policy-making officers or directors, or to any related interest of those persons, must be approved pursuant to the requirements of subsection 3. A loan granted under a line of credit approved pursuant to subsection 3 does not require prior approval pursuant to that subsection as long as the loan is granted within the term of the approved line of credit.

[ 1991, c. 681, §3 (NEW) . ]

**6. Liability for making.** Every principal stockholder, officer, agent or employee of a financial institution who authorizes or assists in procuring or granting or who causes the granting of a loan in violation of this section or section 854, to the extent that the financial institution is subject to the provisions of section 439-A or 854, or who pays or willfully permits the payment of any funds of that institution on such a loan; every director of a financial institution who votes on a loan in violation of any of the provisions of this section; and every director, principal stockholder, officer, agent or employee who knowingly permits or causes any of those actions to be done is personally responsible for payment of the loan and is guilty of a Class E crime. For purposes of this subsection, "agent" or "employee" does not include an individual who is incidentally involved in the preparation of documents or title work related to a loan.

[ 1997, c. 398, Pt. L, §7 (AMD) . ]

**7. Violations.** A loan granted in violation of this section is due and payable immediately, without demand, whether or not it appears on its face to be a time loan. If the superintendent finds a loan outstanding in violation of this section or section 439-A or 854, the superintendent shall notify the president, clerk or treasurer of the financial institution to cause that loan to be paid immediately. If the loan is not paid within

30 days or such further time as the superintendent determines, the superintendent shall report the facts to the Attorney General, who shall commence a civil action in the name and for the benefit of the financial institution for the collection of the loan. The Attorney General may employ special counsel to prosecute the civil action. The financial institution shall pay all expenses of special counsel, to be recovered in a civil action in the name of the State.

[ 1991, c. 681, §3 (NEW) .]

**8. Rulemaking.** The superintendent may adopt rules to administer and carry out this section.

[ 1991, c. 681, §3 (NEW) .]

#### SECTION HISTORY

1991, c. 681, §3 (NEW). 1997, c. 22, §19 (AMD). 1997, c. 398, §L7 (AMD).

## §466. UNLAWFUL ACTS

The acts set forth in this section are unlawful and are criminal offenses unless otherwise provided.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

**1. Copying records of financial institutions.** A director, corporator, officer, agent or employee of a financial institution who copies any of the books, papers, records or documents belonging to or in the custody of such institution, either for that person's own use or for the use of any other person other than in the ordinary and regular course of that person's duties, commits a Class E crime.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Disclosures by service corporation employees.** Any information derived from financial institution records or sources by personnel of a service corporation formed pursuant to section 445 may not be disclosed except in the regular course of business. A person who violates this subsection commits a Class E crime.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Violation of orders.** A person may not violate an order of the superintendent lawfully served upon that person.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Unauthorized business.** A person may not engage in the business of banking unless the person is properly authorized, nor may a person represent that that person is acting as a financial institution, nor use an artificial or corporate name that purports to be or suggests that the person is a financial institution unless the financial institution is properly authorized to do business in this State and except as provided in section 241, subsection 12.

[ 2001, c. 211, §15 (AMD) .]

**5. Procuring loans.** A director, corporator, officer, agent, employee or attorney of a financial institution may not stipulate for or receive or consent or agree to receive any fee, commission, gift or thing of value, from a person, firm or corporation for procuring or endeavoring to procure for the person, firm or corporation, or for any other person, firm or corporation, from any such financial institution, a loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of a paper, note, draft, check

or bill of exchange by any such financial institution. This subsection may not be construed to refer to the expenses of examining titles, drafting conveyances and mortgages and the performance of other purely legal services.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**6. Concealment.** A director, corporator, officer, agent or employee of a financial institution may not conceal or endeavor to conceal a transaction of the financial institution from a director, corporator, officer, agent or employee of the institution or an official or employee of the Bureau of Financial Institutions to whom it should be properly disclosed.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**7. Deception; false statements.** A director, corporator, officer, agent or employee of a financial institution may not maintain or authorize the maintenance of an account of the financial institution in a manner that, to that person's knowledge, does not conform to the requirements prescribed by statutes applicable to the supervision of financial institutions or rules issued under those statutes; and that person may not, with intent to deceive, make a false or misleading statement or entry or omit a statement or entry that should be made in a book, account, report or statement of the institution or obstruct or endeavor to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the Bureau of Financial Institutions.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**8. Violation of Title or rules.** If, in the opinion of the superintendent, a financial institution or its officers or directors have persistently violated a provision of this Title, the superintendent shall immediately report the same with such remarks as the superintendent determines expedient to the Attorney General, who may immediately institute a prosecution on behalf of the State.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**9. False returns.** A director, corporator, officer, agent or employee of a financial institution may not intentionally or knowingly make a false return to the superintendent in response to a call for information issued by the superintendent or by a deputy superintendent or upon the making or filing of a regular or special report required by this Title.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**10. Failure to make returns.** A financial institution that fails to furnish reports and information to the superintendent, as required by this Title within the time specified, is subject to a penalty of not more than \$100 per day for each day it is in violation of this section, which penalty may be recovered in a civil action in the name of the State.

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**11. General penalties.** The follow penalties apply.

A. A person responsible for an act or omission expressly declared to be a criminal offense by statutes pertaining to the supervision of financial institutions and for which no other penalty has been provided by statute commits a Class E crime, except notwithstanding Title 17-A, section 1301, a fine of not more than \$5,000 may be imposed upon a natural person. [2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

A-1. A person who violates paragraph A with the intent to defraud commits a Class C crime. [2003, c. 452, Pt. D, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A director, corporator, officer, agent or employee of a financial institution is responsible for an act or omission of the institution declared to be a criminal offense against statutes pertaining to the supervision of financial institutions whenever, knowing that such act or omission is unlawful, the person participates in authorizing, executing, ratifying or concealing such act or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so. [2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**12. Strict liability.** Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[ 2003, c. 452, Pt. D, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§23-A (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 211, §15 (AMD). 2003, c. 452, §D1 (AMD). 2003, c. 452, §X2 (AFF).

## §467. OUTSIDE BUSINESS INTERESTS

### 1. Acting as broker-dealer prohibited.

[ 1997, c. 22, §20 (RP) .]

**2. Other outside business interests.** A policy-making officer of a financial institution may not engage in, directly or indirectly, any other business or occupation without the consent of a majority of the directors, evidenced by a duly recorded resolution.

[ 1991, c. 386, §16 (AMD) .]

**3. Compliance.** Any person described in subsections 1 or 2 who is in violation of this section on the effective date hereof shall have two years from said effective date to comply with the requirements of subsections 1 and 2.

[ 1975, c. 500, §1 (NEW) .]

**4. Sale of annuities.** A financial institution or a credit union authorized to do business in this State may not arrange for the sale of annuities pursuant to section 443, subsection 11 with an insurance agent if that agent is a director of the financial institution or credit union or with an agency if a director is an owner or otherwise has a financial interest in the agency.

[ 1993, c. 322, §2 (NEW) .]

**5. Provision of names of persons purchasing annuities.** A financial institution or a credit union authorized to do business and to sell annuities in this State may not sell or provide to any individual or institution the name of any person that has purchased annuities from that financial institution or credit union.

[ 1993, c. 322, §2 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1989, c. 502, §D6 (AMD). 1991, c. 386, §16 (AMD). 1993, c. 322, §2 (AMD). 1997, c. 22, §20 (AMD).

## §468. RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Covered transaction" means, with respect to an affiliate of a financial institution:

- (1) A loan or extension of credit to the affiliate;
- (2) A purchase of or an investment in securities issued by the affiliate;
- (3) A purchase of assets, including assets subject to agreement to repurchase, from the affiliate unless exempted by rule or order of the superintendent;
- (4) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person; or
- (5) The issuance of a guarantee, acceptance or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate. [1997, c. 398, Pt. I, §40 (NEW).]

B. "Transaction with an affiliate" means any transaction by a financial institution or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. [1997, c. 398, Pt. I, §40 (NEW).]

C. "Affiliate" has the same meaning as given in section 131, subsection 1-A, except that a subsidiary of a financial institution is not an affiliate of that financial institution. [1997, c. 660, Pt. A, §6 (NEW).]

[ 1997, c. 660, Pt. A, §6 (AMD) .]

**2. Authorization.** A financial institution and its subsidiaries may engage in a transaction with an affiliate subject to the following conditions:

A. The terms and circumstances, including credit standards, are substantially the same, or at least as favorable to the institution or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or [1997, c. 398, Pt. I, §40 (NEW).]

B. In the absence of comparable transactions, the terms and circumstances, including credit standards, would in good faith be offered to, or would apply to, nonaffiliated companies. [1997, c. 398, Pt. I, §40 (NEW).]

[ 1997, c. 398, Pt. I, §40 (NEW) .]

**3. Covered transactions.** In addition to the requirements of subsection 2, a financial institution and its subsidiaries may engage in a covered transaction with an affiliate subject to the following limitations:

A. In the case of an individual affiliate, the aggregate amount of covered transactions may not exceed 10% of the financial institution's total capital; [1997, c. 398, Pt. I, §40 (NEW).]

B. In the case of all affiliates, the aggregate amount of covered transactions may not exceed 20% of the financial institution's total capital; [1997, c. 398, Pt. I, §40 (NEW).]

C. A financial institution and its subsidiaries may not purchase a low-quality asset from an affiliate; [1997, c. 398, Pt. I, §40 (NEW).]

D. Any covered transactions and any other transactions between a financial institution and its affiliates permitted by the superintendent pursuant to subsection 6 must be on terms and conditions that are consistent with safe and sound banking practices; and [1997, c. 398, Pt. I, §40 (NEW).]

E. Each loan or extension of credit to, or guarantee, acceptance or letter of credit issued on behalf of, an affiliate by a financial institution or its subsidiary must be fully secured at the time of the transaction by eligible collateral. [1997, c. 398, Pt. I, §40 (NEW).]

[ 1997, c. 398, Pt. I, §40 (NEW) .]

**4. Prohibited transactions.** The following transactions are prohibited.

A. A financial institution or its subsidiary may not purchase as fiduciary any securities or other assets from any affiliate unless this purchase is permitted under the instrument creating the fiduciary relationship, the purchase is pursuant to court order or the purchase is pursuant to law of the jurisdiction governing the fiduciary relationship. [1997, c. 398, Pt. I, §40 (NEW).]

B. A financial institution or its subsidiary, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the financial institution, unless the purchase or acquisition of this security has been approved, before this security is initially offered for sale to the public, by a majority of the governing body of the financial institution who are not officers or employees of the financial institution or any affiliate of the financial institution. [1997, c. 398, Pt. I, §40 (NEW) .]

[ 1997, c. 398, Pt. I, §40 (NEW) .]

**5. Violations.** Any transaction made in violation of this section is subject to the remedies prescribed in section 465-A.

[ 1997, c. 398, Pt. I, §40 (NEW) .]

**6. Rulemaking.** The superintendent may, by rule or order, define or further define terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines such action is necessary for the protection of depositors or the public and is consistent with the purposes of this section. For institutions organized pursuant to Part 12, the superintendent may, by rule or order, define or further define the terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines that such action is consistent with the powers and limitations accorded institutions organized pursuant to Part 12. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1997, c. 660, Pt. A, §7 (AMD) .]

#### SECTION HISTORY

1997, c. 398, §140 (NEW). 1997, c. 660, §§A6,7 (AMD).

## §469. FUNDAMENTAL CHANGE IN ASSET COMPOSITION

**1. Requirement of prior approval.** A financial institution, without the prior written approval of the superintendent, may not change the composition of all or substantially all of its assets through sales or other dispositions of assets, through purchases or other acquisitions of assets or through other expansions of its operations.

[ 2005, c. 83, §11 (NEW) .]



**2. Considerations.** In determining whether to approve the change in the asset composition of a financial institution, the superintendent shall consider the purpose of the proposed transaction, its impact on the safety and soundness of the financial institution and any effect on the customers of the financial institution. If the superintendent concludes that a filing presents significant or novel policy, supervisory or legal issues, the superintendent may require an application to be filed in accordance with section 252.

[ 2005, c. 83, §11 (NEW) . ]

**3. Exception.** Prior written approval is not required for a change in the composition of assets that is part of the financial institution's ordinary and ongoing core banking activities.

[ 2005, c. 83, §11 (NEW) . ]

**4. Rules.** The superintendent may adopt rules defining a change in the composition of all or substantially all of a financial institution's assets and setting forth the factors to consider in determining what constitutes a fundamental change in assets. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 83, §11 (NEW) . ]

#### SECTION HISTORY

2005, c. 83, §11 (NEW).

## Chapter 47: TRUST ACTIVITIES OF FINANCIAL INSTITUTIONS

### §471. GENERAL

A financial institution may act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates or in any other fiduciary capacity. Assets held in any fiduciary capacity must be segregated from the general assets of the financial institution and the financial institution shall keep a separate set of books and records showing in proper detail all transactions engaged in under this section. The trust activities of financial institutions are governed by this chapter and the Probate Code. [1997, c. 398, Pt. I, §41 (NEW) . ]

#### SECTION HISTORY

1997, c. 398, §I41 (NEW).

### §472. NOTICE

A financial institution shall provide the superintendent 60 days' notice prior to conducting trust activities. The superintendent may prescribe the form and content of the notice, including, but not limited to, business plans, financial projections and management. Notice is not required if trust activities are limited to retirement plans established pursuant to the federal Self-employed Individuals Tax Retirement Act of 1962, Public Law 87-792, 76 Stat. 809, the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001-1461 (1997) or other acts if the retirement funds are invested exclusively in the deposit accounts of the financial institution. [1997, c. 398, Pt. I, §41 (NEW) . ]

#### SECTION HISTORY

1997, c. 398, §I41 (NEW).

## §473. TRUST ASSETS

**1. Separation of trust assets.** Except as otherwise provided, all securities, money and property received by any financial institution to be held in trust or in any other fiduciary capacity must be kept separate and apart from the other assets of the financial institution.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**2. Separation of trust account investments.** The investments of each account must be kept separate from those of all other accounts, except that:

A. They may be placed in the custody of any other financial institution or trust company, whether within or without this State, and may, while so held, be commingled with other securities of other such accounts, if records are kept that show the share of each account in the commingled securities; [ 1997, c. 398, Pt. I, §41 (NEW) .]

B. They may be commingled with similar securities of other accounts, if records are kept to show the share of each account in the commingled securities. The ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the financial institution without physical delivery of any securities; [1997, c. 398, Pt. I, §41 (NEW) .]

C. Assets held by a trustee, executor, administrator, guardian or other fiduciary may be invested in a common trust fund established under Title 18-A, section 7-501; [1997, c. 398, Pt. I, §41 (NEW) .]

D. Securities, the principal and interest of which the United States or any department, agency or instrumentality of the United States has agreed to pay or has guaranteed the payment of, may be deposited with the Federal Reserve Bank in the district in which this State is located, to be credited to one or more fiduciary or safekeeping accounts on the books of that Federal Reserve Bank in the name of the financial institution and to which accounts other similar securities may be credited. A financial institution that deposits securities with a Federal Reserve Bank is subject to rules with respect to the making and maintenance of these deposits the superintendent may from time to time adopt; [ 1997, c. 398, Pt. I, §41 (NEW) .]

E. Any cash, whether principal or income, or both, may be deposited in the financial institution in an account, either time or demand, specifically stating the trust to which the cash belongs; and [ 1997, c. 398, Pt. I, §41 (NEW) .]

F. Any cash, whether principal or income, or both, may be deposited in the financial institution in an aggregate deposit, either time or demand, including balances from other trusts, if the books of the trust department show the specific interest of each trust in this aggregate deposit. [1997, c. 398, Pt. I, §41 (NEW) .]

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**3. Record of trust account.** A record of all matters relating to each trust account must be kept separately in the trust department and must indicate the particulars respecting each account as the superintendent directs.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**4. Exclusion from other financial institution liabilities.** The trust assets held by any financial institution are not subject to any other liabilities of the financial institution.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

### SECTION HISTORY

1997, c. 398, §141 (NEW) .

## §474. BOND

A surety is not necessary on the bond of the financial institution in its capacity as trustee, executor, administrator, conservator, guardian, assignee or receiver, or in any other capacity, unless the court or officer approving the bond requires it. [1997, c. 398, Pt. I, §41 (NEW).]

### SECTION HISTORY

1997, c. 398, §141 (NEW).

## §475. RULEMAKING

The superintendent may adopt rules governing the trust activities of financial institutions. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 398, Pt. I, §41 (NEW).]

### SECTION HISTORY

1997, c. 398, §141 (NEW).

## §476. TRANSFER OF FIDUCIARY RELATIONSHIPS TO AND FROM AFFILIATED FINANCIAL INSTITUTIONS

A financial institution may transfer its fiduciary relationships to another affiliate if the affiliate to which the fiduciary relationships are being transferred is authorized to conduct trust activities in the manner described in this section. [1997, c. 398, Pt. I, §41 (NEW).]

**1. Petition.** The following provisions govern the petition process.

A. The transferee affiliate may apply by petition to the Superior Court or Probate Court in and for the county in which its principal office is located requesting that it be substituted for its affiliate specified in the petition in every existing fiduciary capacity designated in the petition and, in the case of the first petition, in every fiduciary capacity that may take effect after the date on which that petition is filed. [1997, c. 398, Pt. I, §41 (NEW).]

B. Each transferor affiliate shall join in the petition. Notice of the filing of the petition must be given to the superintendent prior to the filing. [1997, c. 398, Pt. I, §41 (NEW).]

C. The petition must indicate the county in which the principal office of each transferor affiliate joining in the petition is located and must designate each fiduciary relationship existing at the date of the petition with respect to which the transferee affiliate, referred to in this section as the "petitioner," requests substitution. The petition additionally must set forth, with regard to each existing fiduciary relationship designated in the petition, the name and address last known to the petitioner of each person entitled to receive notice of hearing on the petition, as follows:

- (1) In a case in which the transferor affiliate specified in the petition is acting with one or more cofiduciaries in respect to the fiduciary relationship, each cofiduciary;
- (2) In a case in which the instrument creating the fiduciary relationship so provides, each person who, alone or together with others, may revoke, terminate or amend the instrument or remove the corporate fiduciary;
- (3) In the case of any trust not described in subparagraph (2), each beneficiary entitled or permitted, on the date the petition is filed, to receive income from the trust pursuant to the terms of the trust and each person who would be presumptively entitled to any portion of the principal of the trust if all income interests in the trust terminated on the date the petition was filed;
- (4) In the case of the estate of any decedent, each person who would have a claim to succession to any property of the decedent under the testacy status upon which the fiduciary has been authorized to proceed;

(5) In the case of any conservatorship, each person whose assets are the subject of the conservatorship and each guardian of the person, if any guardian has been appointed and is a person other than a transferor affiliate;

(6) In the case of any person described in subparagraphs (1) to (5) that is a charitable institution or a charitable trust located within the State, the Attorney General; and

(7) In all cases, the superintendent. [1997, c. 398, Pt. I, §41 (NEW).]

D. The court may appoint one or more guardians ad litem to represent the interests of a person:

(1) Entitled to receive notice pursuant to paragraph C, who is a minor or who is known by the petitioner or any transferor affiliate to be subject to any other disability, including confinement in a penal institution, and for whom no guardian, other than a transferor affiliate, has been appointed;

(2) Of whose estate a transferor affiliate is conservator and for whom no guardian, other than a transferor affiliate, has been appointed; and

(3) Whose identity or whereabouts is unknown.

Title 18-A, section 1-403 governs in determining the propriety of any such appointments. [1997, c. 398, Pt. I, §41 (NEW).]

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**2. Notice.** When any petition described in subsection 1 has been filed, the court in which the petition has been filed shall enter an order fixing a date and time for hearing on the petition, which may not be earlier than 35 days after the filing of the petition, and approving the form of notice to be given by the petitioner as provided in this section. At least 25 days prior to the hearing date, the petitioner shall cause a copy of the notice to be mailed by first class mail to each person identified in the petition as being entitled to receive notice under this section, at that person's last known address as set forth in the petition. In addition, the petitioner shall cause a copy of the notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first publication to be at least 25 days prior to the hearing date. This publication must be in a newspaper of general circulation in each county in which the principal office of the affiliated bank specified in the petition is located.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**3. Contents of notice.** The notice mailed and published with respect to each petition must state the time and place of the hearing, the name of the subsidiary trust company that has filed the petition, the name of each transferor affiliate that has joined in the petition, that the petition requests that the petitioner be substituted for each of its transferor affiliates specified in the petition in every existing fiduciary capacity designated in the petition and, if appropriate, in every fiduciary capacity that may take effect after the petition has been filed and that any person to whom the notice is addressed may file an objection in accordance with subsection 4. All costs incurred in connection with the printing, mailing and publishing of the notice must be borne by the petitioner.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**4. Objections.** A person entitled to receive notice under this section may object to the substitution of the petitioner as fiduciary. Any such person wishing to object must file a written objection to the substitution, setting forth the reasons for the objection, with the court in which the petition has been filed and serve a copy upon the attorney for the petitioner at least 3 days before the date of hearing and must appear at the hearing in person or by an attorney.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**5. Order.** On the date fixed for the hearing on the petition, upon making a determination that notice has been properly given as required by this section, the court shall enter an order substituting the petitioner for each of its specified affiliated banks in every designated existing fiduciary capacity and, in the case of the first petition by the petitioner, in every fiduciary capacity that takes effect after the filing of the petition, except fiduciary capacities in any existing relationship with respect to which an objection has been filed in accordance with subsection 4. In the case of a fiduciary relationship when more than one person is entitled under this section to object to substitution of the petitioner, the properly made objection by fewer than all of the persons must be considered by the court, which shall in its sole discretion determine whether the substitution will be ordered. In the case of a fiduciary relationship in respect of which an objection has been properly made by any person who is entitled pursuant to this section to object to the substitution, the court may in its discretion determine that the resignation of the transferor affiliate will be accepted in respect of the fiduciary relationship. If the court determines that the resignation will be accepted, it shall enter an order substituting a different financial institution or nondepository trust company that has given its written consent to such a substitution prior to the entry of the order. In construing the language of any instrument that is the subject of a proceeding pursuant to this section, this section may not be considered to abrogate or affect the terms of the instrument creating the fiduciary relationship. Upon entry of the court's order, the petitioner, without further act, is substituted in every such fiduciary capacity.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**6. Substitution.** In respect of each fiduciary capacity, existing and future, as to which substitution has been ordered pursuant to this section, each designation of an affiliated bank as fiduciary in any capacity contained in any contract, will, order of any court or other document or instrument is deemed a designation of the petitioner substituted for the transferor affiliate pursuant to this section.

A. Any grant in any such contract, will, order or other document or instrument of any rights, powers, duties or authorities, whether or not discretionary, is deemed conferred upon the petitioner deemed designated as the fiduciary pursuant to this section. [1997, c. 398, Pt. I, §41 (NEW) .]

B. Following the entry of an order pursuant to this section, the petitioner, with respect to each fiduciary relationship affected by the order that is an estate of a deceased person, guardianship or conservatorship, shall notify in writing the register of probate for the county in which the affected affiliated bank was appointed to the affected fiduciary relationship of the substitution of the petitioner for the affected affiliated bank in this fiduciary capacity. The notification must contain the name of the affected estate, guardianship or conservatorship, the date on which the order was entered and the name of the court that entered it and must state that the order was entered pursuant to this section. [1997, c. 398, Pt. I, §41 (NEW) .]

[ 1997, c. 398, Pt. I, §41 (NEW) .]

**7. Assets.** Upon substitution pursuant to this section, each transferor affiliate shall deliver to the petitioner all assets held by the transferor affiliate as fiduciary, except assets held in capacities with respect to which there has been no substitution pursuant to this section and, upon substitution, the assets become the property of the petitioner without the necessity of any instrument of transfer or conveyance. Notwithstanding any provision in this Title, after a substitution of existing fiduciary capacities pursuant to this section, a transferor affiliate remains jointly liable with the petitioner that has been substituted for it in respect of each of the existing fiduciary relationships as to which the substitution has been ordered, but the transferor affiliate is entitled to a right of indemnification against the petitioner for all amounts paid by the transferee affiliate as a result of the joint liability.

[ 1997, c. 398, Pt. I, §41 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §I41 (NEW) .

## Part 5: SAVINGS BANKS

### Chapter 51: CAPITAL AND CASH RESERVE

#### §511. APPLICABLE LAW; POWERS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### §512. UNDIVIDED PROFITS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### §513. GUARANTY FUND

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 34, §10 (RP).

#### §514. CASH RESERVE

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §43 (AMD). 1981, c. 155, §5 (RP).

### Chapter 52: DEPOSITS

#### §521. DEPOSITS IN GENERAL

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### §522. CLASSIFICATION AND AMOUNTS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 22, §21 (AMD). 1997, c. 398, §K7 (RP).

#### §523. DIVIDENDS AND INTEREST ON DEPOSITS AND ACCOUNTS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§524. TRUST ASSETS****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §1 (NEW). 1997, c. 398, §K7 (RP).

**§525. DEPOSITS OF FIDUCIARIES AND OTHER OFFICIALS****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §1 (NEW). 1997, c. 398, §K7 (RP).

**§526. PLEDGE OF ASSETS FOR DEPOSITS****(REPEALED)**

## SECTION HISTORY

1991, c. 386, §17 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 53: LOANS****§531. LOANS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §3 (AMD). 1997, c. 398, §K7 (RP).

**§532. REAL ESTATE MORTGAGE LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 170, §3 (AMD). 1979, c. 429, §10 (AMD). 1979, c. 661, §4 (AMD). 1981, c. 159, (AMD). 1981, c. 501, §34 (AMD). 1985, c. 84, §§1,2 (AMD). 1987, c. 405, §§4-6 (AMD). 1991, c. 34, §11 (AMD). 1997, c. 398, §K7 (RP).

**§533. OTHER MORTGAGE LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§534. OTHER LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §7 (RPR). 1991, c. 34, §12 (AMD). 1991, c. 386, §18 (AMD). 1997, c. 398, §K7 (RP).

**§534-A. COMMERCIAL LOANS****(REPEALED)**

## SECTION HISTORY

1981, c. 646, §2 (NEW). 1987, c. 405, §8 (RP).

**§534-B. INDIVIDUAL BORROWER LOAN LIMITATIONS****(REPEALED)**

## SECTION HISTORY

1987, c. 405, §9 (NEW). 1991, c. 34, §13 (RP).

**§535. LOAN PARTICIPATIONS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §§5-A (AMD). 1981, c. 646, §3 (AMD). 1987, c. 405, §10 (AMD). 1991, c. 34, §14 (AMD). 1991, c. 386, §19 (AMD). 1997, c. 398, §K7 (RP).

**§536. OTHER PRUDENT LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §44 (AMD). 1987, c. 405, §11 (RP).

**§537. ADDITIONAL LOANS AUTHORIZED BY SUPERINTENDENT****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §4 (AMD). 1987, c. 405, §12 (RP).

**§538. MISCELLANEOUS LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §6 (AMD). 1979, c. 170, §4 (AMD). 1997, c. 398, §K7 (RP).

**§539. AGGREGATE LIMITATION ON LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§23-B (AMD). 1991, c. 386, §20 (AMD). 1997, c. 398, §K7 (RP).

**§539-A. COMMERCIAL LINES OF CREDIT****(REPEALED)**



## SECTION HISTORY

1983, c. 251, §1 (NEW). 1987, c. 405, §13 (AMD). RR 1991, c. 2, §24 (COR). 1991, c. 34, §15 (AMD). 1997, c. 22, §22 (AMD). 1997, c. 398, §K7 (RP). 1997, c. 683, §B4 (AMD).

**Chapter 54: REAL PROPERTY OWNERSHIP****§541. REAL ESTATE INVESTMENT IN GENERAL**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§542. REAL ESTATE OTHER THAN FOR OFFICES**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §45 (AMD). 1981, c. 646, §5 (AMD). 1997, c. 398, §K7 (RP).

**§543. HOUSING DEVELOPMENT REAL ESTATE**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 55: INVESTMENTS IN SECURITIES****§551. INVESTMENTS IN GENERAL**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §14 (RP).

**§552. GOVERNMENT UNIT BONDS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §46 (AMD). 1987, c. 405, §14 (RP).

**§553. CORPORATE SECURITIES**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §47 (AMD). 1987, c. 405, §14 (RP).

**§554. FINANCIAL INSTITUTION STOCK AND OTHER OBLIGATIONS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §24 (AMD). 1979, c. 663, §48 (AMD). 1981, c. 646, §6 (AMD). 1983, c. 480, §B12 (AMD). 1987, c. 405, §14 (RP).

**§555. OTHER STOCK INVESTMENTS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 640, §1 (AMD). 1987, c. 405, §14 (RP).

**§556. OTHER PRUDENT SECURITIES****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §7 (AMD). 1987, c. 405, §14 (RP).

**§557. RETENTION OF UNAUTHORIZED SECURITIES****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §14 (RP).

**§558. CHANGE IN INVESTMENT LIMITATIONS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §14 (RP).

**§559. SUBSIDIARY COMPANIES****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §14 (RP).

**Chapter 55-A: INVESTMENT IN SECURITIES****§559-A. INVESTMENTS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1987, c. 405, §15 (NEW). 1997, c. 398, §K7 (RP).

**§559-B. RETENTION OF UNAUTHORIZED SECURITIES****(REPEALED)**

## SECTION HISTORY

1987, c. 405, §15 (NEW). 1997, c. 398, §K7 (RP).

**§559-C. SUBSIDIARY COMPANIES**

*(REPEALED)*

*(REPEALED)*

## SECTION HISTORY

1987, c. 405, §15 (NEW). 1997, c. 398, §K7 (RP).

**§559-D. COMMON AND PREFERRED STOCK**

*(REPEALED)*

## SECTION HISTORY

1987, c. 405, §15 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 56: ADDITIONAL POWERS****§561. POWERS IN GENERAL**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§562. FEDERAL RESERVE MEMBERSHIP**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 698, §25 (AMD). 1997, c. 398, §K7 (RP).

**§563. FEDERAL HOME LOAN BANK MEMBERSHIP**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 698, §26 (AMD). 1997, c. 398, §K7 (RP).

**§564. PROMISSORY NOTES; BILLS OF EXCHANGE**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§565. BORROWING**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§566. BOND*****(REPEALED)***

## SECTION HISTORY

1983, c. 89, §2 (NEW). 1997, c. 398, §K7 (RP).

**§567. TRUSTS*****(REPEALED)***

## SECTION HISTORY

1983, c. 89, §2 (NEW). 1997, c. 398, §K7 (RP).

**§568. EXECUTOR, GUARDIAN, ETC.*****(REPEALED)***

## SECTION HISTORY

1983, c. 89, §2 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 57: PROHIBITIONS****§571. PROHIBITIONS IN GENERAL*****(REPEALED)***

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§572. USE OF THE WORD "SAVING"*****(REPEALED)***

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 647, §8 (AMD). 1995, c. 628, §24 (RP).

## Part 6: TRUST COMPANIES

### Chapter 61: CAPITAL AND CASH RESERVE

#### §611. APPLICABLE LAW; POWERS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### §612. GUARANTY FUND

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 34, §16 (RP).

#### §613. CASH RESERVE

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §49 (AMD). 1981, c. 155, §6 (RP).

#### §614. FEDERAL RESERVE MEMBERSHIP

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §25 (AMD). 1981, c. 698, §27 (AMD). 1997, c. 398, §K7 (RP).

#### §615. LIABILITY OF STOCKHOLDERS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### Chapter 62: DEPOSITS

#### §621. DEPOSITS IN GENERAL

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### §622. PLEDGE OF ASSETS FOR DEPOSITS

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§623. TRUST ASSETS***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §50 (AMD). 1989, c. 661, §1 (AMD). 1997, c. 398, §K7 (RP).

**§624. DEPOSITS BY FIDUCIARIES AND OTHER OFFICIALS***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§625. DEPOSITS OF SECURITIES***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §16 (RP).

**§626. FEDERAL HOUSING ADMINISTRATION AND MAINE HOUSING AUTHORITY MORTGAGES AND DEBENTURES AS COLLATERAL***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 63: LOANS****§631. LOANS IN GENERAL***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§632. LOANS AND SECURITY***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§633. INDIVIDUAL BORROWER LOAN LIMITATIONS***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §§17,18 (AMD). 1991, c. 34, §17 (RP).

**§634. GUARANTEED LOANS***(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§635. INVESTMENTS SECURED BY MORTGAGES UNDER THE G. I. BILL OF RIGHTS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§636. COMMERCIAL LINES OF CREDIT**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 251, §2 (AMD). 1987, c. 405, §19 (AMD). RR 1991, c. 2, §25 (COR). 1991, c. 34, §18 (AMD). 1995, c. 24, §4 (AMD). 1997, c. 398, §K7 (RP).

**Chapter 64: PROPERTY OWNERSHIP****§641. REAL AND PERSONAL PROPERTY**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §8 (RPR). 1997, c. 398, §K7 (RP).

**Chapter 65: INVESTMENTS IN SECURITIES****§651. INVESTMENTS IN GENERAL**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§652. STOCK IN FEDERAL RESERVE BANK; FEDERAL DEPOSIT INSURANCE CORPORATION**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§653. SUBSIDIARY COMPANIES**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

## Chapter 66: ADDITIONAL POWERS

### §661. POWERS IN GENERAL

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### §662. BOND

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### §663. TRUSTS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### §664. EXECUTOR, GUARDIAN, ETC.

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### §665. ACTING AS AN AGENT.

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §20 (RP).

### §666. BILLS OR DRAFTS

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §21 (RP).

## Chapter 67: PROHIBITIONS

### §671. PROHIBITIONS IN GENERAL

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

### §672. SURETY BOND BUSINESS PROHIBITED

*(REPEALED)*



## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§673. USE OF WORD "BANK"**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §11 (AMD). 1985, c. 647, §9 (AMD). 1995, c. 628, §25 (RP).

**Chapter 68: SUBSIDIARY TRUST COMPANIES****§681. DEFINITIONS**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). 1997, c. 398, §K7 (RP).

**§682. ORGANIZATION OF SUBSIDIARY TRUST COMPANIES**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). 1997, c. 398, §K7 (RP).

**§683. BUSINESS OF SUBSIDIARY TRUST COMPANIES; LIMITATION ON POWERS**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). RR 1991, c. 2, §26 (COR). 1997, c. 398, §K7 (RP).

**§684. TRUST OFFICES**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). 1997, c. 398, §K7 (RP).

**§685. INTERSTATE BANKING**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). 1997, c. 398, §K7 (RP).

**§686. TRANSFER OF FIDUCIARY RELATIONSHIPS FROM AFFILIATED BANKS TO SUBSIDIARY TRUST COMPANIES**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). RR 1991, c. 2, §27 (COR). 1997, c. 398, §K7 (RP).

**§687. APPLICABLE LAWS AND REGULATIONS**

*(REPEALED)*

## SECTION HISTORY

1985, c. 328, §5 (NEW). 1997, c. 398, §K7 (RP).

## Part 7: SAVINGS AND LOANS

### Chapter 71: CAPITAL AND CASH RESERVE

#### **§711. APPLICABLE LAW; POWERS; NAME**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### **§712. UNDIVIDED PROFITS**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### **§713. GUARANTY FUND**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 34, §19 (RP).

#### **§714. CASH RESERVE**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §51 (AMD). 1981, c. 155, §7 (RP).

### Chapter 72: DEPOSITS

#### **§721. DEPOSITS IN GENERAL**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

#### **§722. CLASSIFICATION AND AMOUNTS**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 22, §23 (AMD). 1997, c. 398, §K7 (RP).

#### **§723. DIVIDENDS AND INTEREST ON SHARE ACCOUNTS AND DEPOSITS**

*(REPEALED)*

SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§724. LIMITATION UPON ACCOUNTS OR DEPOSITS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§725. WITHDRAWALS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§726. RETIREMENT OF ACCOUNTS OR DEPOSITS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§727. APPLICATION OF WITHDRAWAL VALUE TO INDEBTEDNESS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§728. DEPOSITS AS LEGAL INVESTMENTS OF SECURITY FOR BONDS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). RR 1993, c. 1, §27 (COR). 1997, c. 398, §K7 (RP).

**§729. TRUST ASSETS****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §3 (NEW). 1997, c. 398, §K7 (RP).

**§729-A. DEPOSITS OF FIDUCIARIES AND OTHER OFFICIALS****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §3 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 73: LOANS****§731. LOANS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §22 (AMD). 1997, c. 398, §K7 (RP).

## **§732. REAL ESTATE MORTGAGE LOANS**

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §7 (AMD). 1979, c. 661, §5 (AMD). 1985, c. 84, §§3-5 (AMD). 1987, c. 405, §23 (AMD). 1991, c. 34, §20 (AMD). 1997, c. 398, §K7 (RP).

## **§733. OTHER MORTGAGE LOANS**

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

## **§734. OTHER LOANS**

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1987, c. 405, §24 (RPR). 1991, c. 34, §21 (AMD). 1997, c. 398, §K7 (RP).

## **§734-A. COMMERCIAL LOANS**

*(REPEALED)*

### SECTION HISTORY

1981, c. 646, §9 (NEW). 1987, c. 405, §25 (RP).

## **§734-B. INDIVIDUAL LIMITATIONS**

*(REPEALED)*

### SECTION HISTORY

1987, c. 405, §26 (NEW). 1991, c. 34, §22 (RP).

## **§735. LOAN PARTICIPATIONS**

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §10 (AMD). 1987, c. 405, §27 (AMD). 1991, c. 34, §23 (AMD). 1991, c. 386, §21 (AMD). 1997, c. 398, §K7 (RP).

## **§736. OTHER PRUDENT LOANS**

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §52 (AMD). 1987, c. 405, §28 (RP).

**§737. ADDITIONAL LOANS AUTHORIZED BY SUPERINTENDENT****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §11 (AMD). 1987, c. 405, §29 (RP).

**§738. MISCELLANEOUS LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §53 (AMD). 1997, c. 398, §K7 (RP).

**§739. AGGREGATE LIMITATION ON LOANS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§739-A. COMMERCIAL LINES OF CREDIT****(REPEALED)**

## SECTION HISTORY

1983, c. 251, §3 (NEW). 1987, c. 405, §30 (AMD). RR 1991, c. 2, §28 (COR). 1991, c. 34, §24 (AMD). 1997, c. 22, §24 (AMD). 1997, c. 398, §K7 (RP). 1997, c. 683, §B5 (AMD).

**Chapter 74: REAL PROPERTY OWNERSHIP****§741. REAL ESTATE INVESTMENTS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§742. REAL ESTATE OTHER THAN FOR OFFICES****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 646, §12 (RPR). 1997, c. 398, §K7 (RP).

**Chapter 75: INVESTMENTS IN SECURITIES****§751. INVESTMENTS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§752. INVESTMENTS AUTHORIZED FOR SAVINGS BANKS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§753. FEDERAL HOME LOAN BANK OBLIGATIONS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§754. SUBSIDIARY COMPANIES**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 76: ADDITIONAL POWERS****§761. POWERS IN GENERAL**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§762. EXPENSES AND SERVICE CHARGES**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§763. FEDERAL HOME LOAN BANK MEMBERSHIP**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 698, §28 (AMD). 1997, c. 398, §K7 (RP).

**§764. ACCOUNT IN FEDERAL RESERVE BANK**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§765. MUTUAL ASSOCIATION ACTING AS AN AGENT****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§766. BORROWING****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§767. BOND****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §4 (NEW). 1997, c. 398, §K7 (RP).

**§768. TRUSTS****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §4 (NEW). 1997, c. 398, §K7 (RP).

**§769. EXECUTOR, GUARDIAN, ETC.****(REPEALED)**

## SECTION HISTORY

1983, c. 89, §4 (NEW). 1997, c. 398, §K7 (RP).

**Chapter 77: PROHIBITIONS****§771. PROHIBITIONS IN GENERAL****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).

**§772. BUSINESS RESTRICTIONS****(REPEALED)**

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K7 (RP).



## Part 8: CREDIT UNIONS

### Chapter 81: ORGANIZATION AND FORMATION

#### §811. APPLICABLE LAW; POWERS

**1. Organized under this Title.** Every credit union lawfully organized shall be subject to the provisions of this Part and all regulations issued hereunder.

[ 1975, c. 500, §1 (NEW) . ]

**2. Chartered by special Act.** Chapters 81 through 88 shall not be construed as repealing, modifying or amending the provisions of any private or special Acts authorizing the organization of or defining the purposes of corporations of a similar nature to credit unions, except that such corporations shall be deemed to have all the powers vested in corporations organized under this Part in addition to those powers under such private or special Acts.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

#### §812. PERMISSION TO ORGANIZE

**1. Organizers.** Any number of persons, but not less than 10, all of whom shall be residents of this State, may apply in writing to the superintendent for permission to organize a credit union for the purposes of encouraging thrift among its members, creating a source of credit at legitimate rates of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

[ 1983, c. 51, §1 (AMD) . ]

**2. Application to organize.** The organizers shall file with the superintendent an application to organize a credit union, together with copies that the superintendent requires and shall agree to be bound by the terms of that application. The application must state:

A. The name by which the credit union will be known, which must include the words "credit union";

[ 1991, c. 386, §22 (AMD) . ]

B. The proposed location of its principal office; [ 1975, c. 500, §1 (NEW) . ]

C. The names and addresses of subscribers to the application and the number of shares subscribed for by each; [ 1991, c. 386, §22 (AMD) . ]

D. The proposed field of membership as defined in section 814; [ 1997, c. 108, §2 (AMD) . ]

E. All other information that the superintendent determines necessary and appropriate; and [ 1997, c. 108, §2 (AMD) . ]

F. The information required under section 817, if applicable. [ 1997, c. 108, §3 (NEW) . ]

An application for permission to organize a credit union is not considered complete unless accompanied by an application fee payable to the Treasurer of State to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee according to different application requirements, but in no instance may it exceed \$1,000.

[ 1997, c. 108, §§2, 3 (AMD) . ]

**3. Publication of notice.** After determining that the application required in subsection 2 is complete, the superintendent may advise the organizers to publish, within 15 days of such advice, a notice, in such form as the superintendent may prescribe. If required, such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the credit union is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall set forth the information in the application for permission to organize, and such additional information as the superintendent may require. The superintendent may require individual notice to any person, organization or corporation, and may require that one of such publications contain the information required under section 252, subsection 2.

[ 1975, c. 500, §1 (NEW) .]

#### **4. Permission from superintendent.**

A. In accordance with section 252, the superintendent shall determine whether a certificate to commence business and permission to organize should be granted. [1975, c. 500, §1 (NEW) .]

B. In addition to the criteria set forth in sections 253 and 817, the superintendent shall consider the following criteria in determining whether permission to organize should be granted; namely that:

- (1) The character, responsibility and general fitness of the persons named in such certificate are such as to reasonably assure the proper conduct of the affairs and operation of a credit union;
- (2) The proposed field of membership provides a common bond of interest and a potential membership such as will reasonably assure success of the credit union; and
- (3) The proposed credit union will not jeopardize materially the financial stability of any existing credit union. [1997, c. 108, §4 (AMD) .]

[ 1997, c. 108, §4 (AMD) .]

#### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1983, c. 51, §1 (AMD). RR 1991, c. 2, §29 (COR). 1991, c. 386, §22 (AMD). 1997, c. 108, §§2-4 (AMD).

## **§813. ORGANIZATION**

Upon receipt of a permission to organize pursuant to section 812, the organizers shall comply with the following requirements: [1975, c. 500, §1 (NEW) .]

**1. Conformance with law.** Other than as provided herein, a credit union must be organized in accordance with Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §15 (COR) .]

#### **2. Bylaws.**

A. The organizers shall next adopt bylaws consistent with this Part for the general supervision of, and which shall govern the affairs of, the credit union. [1975, c. 500, §1 (NEW) .]

B. The bylaws must provide for and determine:

- (1) The name of the corporation;
- (2) The purpose for which it is formed;
- (3) The condition of residence, occupation or association that qualifies persons for membership;
- (4) The conditions on which shares may be paid in, transferred and withdrawn, including shares of nonmembers as provided in section 817;

- (5) The method of receipting for money paid on account of shares or repaid on loans;
- (6) The number of directors, and the number of members of the credit committee and the supervisory committee, and the manner of electing same;
- (7) The time of holding regular meetings of the board of directors, the credit committee and the supervisory committee;
- (8) The duties of the several officers;
- (9) The entrance fees, if any, to be charged;
- (10) The fines, if any, to be charged for failure to meet obligations to the corporation punctually;
- (11) The manner in which members are notified of all meetings;
- (12) The number of members who constitute a quorum at all meetings; and
- (13) Such other regulations as may be deemed necessary. [1997, c. 108, §5 (AMD).]

C. Within 10 days after adoption of the bylaws, the organizers shall file copies thereof with the superintendent, and, within 15 days after receipt the superintendent shall, after examining such bylaws for conformance with the requirements of this Title, approve or disapprove such bylaws. [1975, c. 500, §1 (NEW).]

[ 1997, c. 108, §5 (AMD) . ]

### **3. Payment of shares.**

A. A credit union shall not commence business until the number of shares subscribed to in section 812, subsection 2, have been fully paid in by the subscribers. [1975, c. 500, §1 (NEW).]

B. At such time as the subscribed shares have been fully paid in, a complete list of the shareholders with the name, address, occupation and amount of shares held by each shall be filed with the superintendent, which list shall be verified by the board of directors of the credit union. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) . ]

### **4. Certificate to commence business.**

A. Upon receipt of the statement required in subsection 3, the superintendent shall cause an examination to be made to determine if the shares have been paid in and all requirements of this section and other laws have been complied with. [1975, c. 500, §1 (NEW).]

B. Upon completion of his examination, and if all requirements of paragraph A are met, including approval of the bylaws, the superintendent shall issue a certificate authorizing the credit union to receive payments on account of shares, make loans, and otherwise commence business. Such certificate shall be conclusive of the facts stated therein; and it shall be unlawful for any credit union to begin transacting business until such a certificate has been granted. A copy of the certificate shall be filed with the Secretary of State by the superintendent. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) . ]

### **5. Failure to commence business.**

A. Any credit union which shall fail to commence business as a credit union within one year after receiving permission to organize shall forfeit said permission and any certificate to commence business so obtained; and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent. [1975, c. 500, §1 (NEW).]

B. Notwithstanding the limitation in paragraph A, the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months, upon written application by the organizers setting forth the reasons for such extension. If an extension is approved by the superintendent, the Secretary of State must be so notified by the superintendent. [2009, c. 2, §8 (COR).]

[ 2009, c. 2, §8 (COR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 108, §5 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B15 (COR). RR 2009, c. 2, §8 (COR).

## §814. MEMBERSHIP REQUIREMENTS

**1. Field of membership.** "Field of membership" of a credit union means those persons, including nonnatural persons, having a common bond of occupation or association; multiple groups of such persons, each group having a common bond of occupation or association within that group; residence or employment within a well-defined neighborhood, community or rural district; employment by a common employer or by employers located within a well-defined industrial park or community; membership in a bona fide fraternal, religious, cooperative, labor, rural, educational or similar organization; and members of the immediate families of such persons.

A. When determining whether a credit union's proposed field of membership meets the requirements of this section, the superintendent shall consider all relevant guidelines established by the National Credit Union Administration that address the issues of common bond, overlapping fields of membership, expansions or conversions of field of membership and the documentation required for amending a field of membership, except that the superintendent is not required to adhere to those guidelines. [2003, c. 36, §1 (AMD).]

A-1. Notwithstanding any federal law or guideline established by the National Credit Union Administration, the superintendent is authorized to permit a credit union that converts its field of membership to become a community-chartered credit union to retain in its field of membership, after such conversion, one or more groups or portions of groups that were included in the credit union's field of membership prior to the conversion. The superintendent may adopt rules in accordance with section 251 to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 36, §1 (NEW).]

B. The superintendent shall provide notice to interested parties of a bylaw amendment sought by a credit union that proposes a change in field of membership. [1995, c. 101, §2 (NEW).]

C. For purposes of this section, "nonnatural person" means a corporation, partnership, joint venture, trust, estate, unincorporated association, fraternal organization or voluntary association that is:

- (1) Specifically listed in a credit union's bylaws as a member;
- (2) With respect to a community-chartered credit union, located within the geographic limits of the credit union's field of membership; or
- (3) Composed principally of individual persons within the credit union's field of membership and the credit union's field of membership includes organizations of such persons. [2001, c. 211, §16 (NEW).]

[ 2003, c. 36, §§1, 2 (AMD) .]

### 2. Limited members.

[ 2001, c. 211, §17 (RP) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1995, c. 101, §§1,2 (AMD). 1999, c. 218, §25 (AMD). 2001, c. 211, §§16,17 (AMD). 2003, c. 36, §§1,2 (AMD).

## §815. SUPERVISION AND EXAMINATION

Credit unions are under the supervision of the superintendent; and Part 2 of this Title is applicable to credit unions in the same manner as that Part applies to financial institutions in general. [1995, c. 24, §5 (AMD).]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §26 (AMD). 1995, c. 24, §5 (AMD).

## §816. OUT-OF-STATE CREDIT UNIONS

**1. Approval and findings of superintendent.** A credit union organized in another state may establish a branch office as a credit union in this State with the approval of the superintendent. The superintendent shall find that the out-of-state credit union:

A. Is a credit union organized under laws similar to this Part; [1983, c. 373, §1 (NEW).]

B. Has received prior approval from its state of organization to establish a branch office in this State; [1983, c. 373, §1 (NEW).]

C. Has adequate financial resources; [1983, c. 373, §1 (NEW).]

D. Has share insurance comparable to that required for credit unions incorporated under this Part; [1983, c. 373, §1 (NEW).]

E. Is effectively examined and supervised by the supervisory authority of the state in which it is organized; and [1983, c. 373, §1 (NEW).]

F. Needs to conduct business in this State to adequately serve its members in this State. [1983, c. 373, §1 (NEW).]

The superintendent shall further determine that Maine credit unions are allowed to do business in the other state under conditions similar to these provisions.

[ 1983, c. 373, §1 (NEW) .]

**2. Conditions.** The out-of-state credit union shall agree to:

A. Grant loans at rates not in excess of the rates permitted for credit unions incorporated under this Part; [1983, c. 373, §1 (NEW).]

B. Comply with the same consumer protection provisions that credit unions incorporated under this Part must obey; [1983, c. 373, §1 (NEW).]

C. Be subject to examination by regulatory authorities in this State; and [1983, c. 373, §1 (NEW).]

D. Designate and maintain an agent for the service of process in this State. [1983, c. 373, §1 (NEW).]

[ 1983, c. 373, §1 (NEW) .]

**3. Other actions.** The superintendent may take such reasonable steps as are necessary to insure that the supervisory authority of the state in which the credit union is organized adequately examines and otherwise regulates the credit union. The superintendent may request the other state supervising authority to disclose the findings of any such examination.

[ 1983, c. 373, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 373, §1 (NEW).

## §817. COMMUNITY DEVELOPMENT CREDIT UNIONS

**1. Designation.** A credit union may apply to the superintendent in writing for designation as a community development credit union for the purposes of promoting economic revitalization and community development by providing financial services primarily to low-income individuals.

[ 1997, c. 108, §6 (NEW) .]

**2. Shares and deposit accounts of nonmembers.** A community development credit union may accept payments representing shares from nonmembers if the shares are of a type approved by the National Credit Union Administration and deposit accounts from nonmembers if the deposit accounts are of a type approved by the superintendent; however, nonmember shares and deposit accounts may not exceed the greater of \$1,500,000 or 20% of total shares without the prior approval of the superintendent.

[ 1997, c. 108, §6 (NEW) .]

**3. Assistance from Community Development Credit Union Revolving Loan Fund.** Upon prior notice to the superintendent, a community development credit union may apply for and receive assistance from the Community Development Credit Union Revolving Loan Fund administered by the National Credit Union Administration. Assistance from the fund may take the form of:

A. Financial assistance through equity investments, credit union shares, loans or grants; or [1997, c. 108, §6 (NEW) .]

B. Technical assistance directly or through grants. [1997, c. 108, §6 (NEW) .]

[ 1997, c. 108, §6 (NEW) .]

**4. Application of other provisions.** Except as otherwise provided in this section, a community development credit union is subject to the provisions of this Title and all rules issued under this Title that are applicable to credit unions.

[ 1997, c. 108, §6 (NEW) .]

**5. Removal of community development credit union designation.** If a majority of a community development credit union's field of membership no longer meets the definition of low-income set forth in section 131, subsection 24-A, the community development credit union designation is removed. The superintendent shall notify a community development credit union when the community development credit union designation is removed.

[ 1997, c. 108, §6 (NEW) .]

#### SECTION HISTORY

1997, c. 108, §6 (NEW).

## Chapter 82: POWERS

### §821. POWERS IN GENERAL

In addition to all services to members and to nonmembers as provided in section 817 incidental to the powers granted credit unions elsewhere in this Title, a credit union is empowered to do the acts set forth in this chapter, subject to the conditions and limitations set forth herein. [1997, c. 108, §7 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §27 (RPR). 1997, c. 108, §7 (AMD).

### §822. BORROWING

**1. Limitation.** A credit union may borrow moneys from any source; provided that its aggregate borrowing shall not exceed 50% of its paid-in share capital and total surplus.

[ 1975, c. 500, §1 (NEW) .]

**2. Exceeding limitation.** Upon making application to and receiving the written approval of the superintendent, a credit union may borrow in excess of the limitation set forth in subsection 1, but not in excess of the amount stated in such approval.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

### §823. SERVICES FOR MEMBERS

**1. Sale of negotiable checks and money orders.** A credit union may engage directly in the business of selling, issuing or registering checks or money orders to its members.

[ 1975, c. 550, §1 (NEW) .]

**2. Safe deposit boxes.** A credit union may own and maintain safe deposit vaults, with boxes, safes and other facilities therein, for the use of its members and for the safekeeping or storage of personal property susceptible of being deposited therein, subject to the general laws and regulations applicable to safe deposit boxes.

[ 1975, c. 500, §1 (NEW) .]

**3. Safekeeping.** A credit union may receive on deposit from its members property for safekeeping.

[ 1975, c. 500, §1 (NEW) .]

**4. Financial counseling.** A credit union may render, or participate in the rendering of, financial counseling services, including budget planning, debt management and related services, to its members.

[ 1975, c. 500, §1 (NEW) .]

**5. Trustee, self-employment retirement plans.** A credit union shall have the power to act as trustee for a member under a retirement plan subject to the conditions and limitations set forth in section 442.

[ 1985, c. 588, §3 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 588, §3 (AMD).

## §824. PARTICIPATION IN ELECTRONIC FUNDS TRANSFER SYSTEM

**1. Authorization.** A credit union may issue cards or other devices to its members that permit the members to gain access to or participate in an established electronic funds transfer system.

[ 2003, c. 322, §16 (AMD) .]

#### **2. Limitations.**

[ 2003, c. 322, §16 (RP) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §16 (AMD).

## §825. PARTICIPATION IN PUBLIC LOTTERIES

A credit union may participate in public lotteries authorized pursuant to the laws of this State in the manner outlined in guidelines and regulations promulgated pursuant to such laws; provided that the superintendent may promulgate additional rules and regulations governing such participation. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §826. OFFICES AND SATELLITE FACILITIES

A credit union may establish, relocate, close and operate a branch or satellite facility in accordance with chapter 33, except that the limitation of section 337, subsection 2 does not apply. The limits of section 863 apply to credit union investment in real estate for office facilities. The establishment, relocation or closing of a branch or facility must meet the needs and convenience of the credit union's members. [2003, c. 322, §17 (RPR).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §28 (RPR). 1983, c. 373, §2 (AMD). 2003, c. 322, §17 (RPR).

## §827. ACCOUNTS

**1. Receipt of savings.** Except as provided in subsection 4, a credit union may receive savings of its members in payment for shares, Christmas clubs, special purpose clubs, tax clubs, deposit accounts and the like.

[ 1997, c. 108, §8 (AMD) .]



**2. Receipt of payments from government agencies and other credit unions.** A credit union may act as fiscal agent for and receive payments on shares and deposits from the Federal Government, this State or any agency or political subdivision or another federally insured credit union.

[ 2001, c. 211, §18 (AMD) .]

**3. Lien on shares.** A credit union may impress and enforce a lien on the shares and dividends of a member to the extent of any loan made to and any dues or charges payable by that member. A credit union that has been designated a community development credit union pursuant to section 817 may impress and enforce a lien on the shares and dividends of a nonmember to the extent of any loan made to and any dues or charges payable by that nonmember.

[ 2003, c. 322, §18 (AMD) .]

**4. Nonmember shares and deposit accounts.** A community development credit union designated by the superintendent as a community development credit union under section 817 may receive payments and savings from nonmembers representing shares of a type approved by the National Credit Union Administration and deposit accounts of a type approved by the superintendent.

[ 1997, c. 108, §9 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 51, §2 (RPR). 1995, c. 512, §1 (AMD). 1997, c. 108, §8 (AMD). 1997, c. 108, §9 (AMD). 2001, c. 211, §18 (AMD). 2003, c. 322, §18 (AMD).

## §828. POWERS OF FEDERALLY CHARTERED CREDIT UNIONS

Notwithstanding any other provisions of law, a credit union has the power to engage in any activity that a credit union chartered by or otherwise subject to the jurisdiction of the Federal Government may be authorized to engage in by federal legislation or regulations issued pursuant to such legislation. In the event any law of this State is preempted or declared invalid pursuant to applicable federal law, by a court of competent jurisdiction or by the responsible federal chartering authority with respect to any power that may be exercised by a credit union chartered by or otherwise subject to the jurisdiction of the Federal Government, that law is invalid with respect to credit unions authorized to do business in this State. The superintendent may adopt rules to ensure that such powers are exercised in a safe and sound manner with adequate consumer protections. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 207, §2 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 207, §2 (AMD).

## Chapter 83: FINANCIAL MANAGEMENT

## §831. SHARE CAPITAL AND SURPLUS

### 1. Amount and par value of share capital.

A. The capital of a credit union shall be unlimited in amount and shall consist of shares which may be subscribed to and paid for in such manner as the bylaws may prescribe. [1975, c. 500, §1 (NEW) .]

B. The par value of such shares may be established by the credit union in its bylaws, in an amount not less than \$5 per share, provided that par values in excess of \$5 per share shall be in multiples of \$5. [1983, c. 51, §3 (AMD).]

C. The maximum amount of shares that may be held by any one member or nonmember as provided in section 817 must be established from time to time by resolution of the board of directors. [1997, c. 108, §10 (AMD).]

[ 1997, c. 108, §10 (AMD) .]

**2. Share transactions.** The provisions of sections 422-A, 427, 428 and 429 are applicable to shares or accounts in a credit union.

[ 2003, c. 322, §19 (AMD) .]

**3. Surplus.** "Surplus" or "total surplus" of a credit union means the sum of its guaranty fund, undivided profits and other surplus and reserve accounts.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 51, §3 (AMD). 1997, c. 108, §§10,11 (AMD). 2003, c. 322, §19 (AMD).

## §832. GUARANTY FUND

**1. Requirement.** Every credit union shall establish and maintain a guaranty fund in the manner set forth in subsections 2 and 3. Such fund shall provide security against losses and contingencies, and all losses not otherwise absorbed shall be charged against it.

[ 1975, c. 500, §1 (NEW) .]

**2. Payments to fund.** Before the payment of a dividend, there must be set apart into the guaranty fund a percentage of the gross income of the credit union that was accumulated during the preceding dividend period, in the following manner:

A. For credit unions in operation less than 4 years or having assets of less than \$500,000, 10% of gross income until the guaranty fund equals 7% of the total outstanding loans and risk assets of the credit union and then 5% of the gross income until the guaranty fund equals 10% of the total outstanding loans and risk assets; or [2003, c. 322, §20 (AMD).]

B. For credit unions in operation more than 4 years and having assets of \$500,000 or more, 10% of gross income until the guaranty fund equals 4% of the total outstanding loans and risk assets of the credit union and then 5% of the gross income until the guaranty fund equals 6% of the total outstanding loans and risk assets. [2003, c. 322, §20 (AMD).]

The superintendent may waive all or part of the payments required under this subsection for good cause shown by a credit union.

[ 2003, c. 322, §20 (AMD) .]

**3. Restoration of fund.** Whenever the guaranty fund shall fall below the requirements of subsection 2, it shall be replenished by regular contributions in such amounts as required by subsection 2.

[ 1979, c. 134, §2 (RPR) .]

**4. Superintendent's authority.** The superintendent shall have authority to define which assets of a credit union are to be deemed "risk" assets for purposes of this section; and the superintendent may vary the amount of the fund required under this section for individual credit unions as may be necessary for the protection of the credit union and its members.

[ 1975, c. 500, §1 (NEW) .]

**5. Rulemaking.** The superintendent may adopt rules to implement this section or vary the amount of the fund required under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 322, §21 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 134, §§1,2 (AMD). 1979, c. 663, §54 (AMD). 2003, c. 322, §§20,21 (AMD).

## §833. DIVIDENDS AND INTEREST

### 1. Time for payment; method.

[ 2003, c. 322, §22 (RP) .]

**1-A. Time for payment of dividends; method.** At such intervals as the board of directors may authorize and after provision for the guaranty fund established pursuant to section 832, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of share certificates and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, share certificates and share draft accounts as authorized by the board of directors.

[ 2003, c. 322, §23 (NEW) .]

### 2. Rates on different accounts.

[ 2003, c. 322, §24 (RP) .]

### 3. Maximum dividend rate.

[ 1981, c. 501, §35 (RP) .]

### 3-A. Dividend rate.

[ 2003, c. 322, §25 (RP) .]

**4. Tax exemption.** Shares in a credit union organized pursuant to this Part shall be exempt from taxes; and no taxes or charges, except as otherwise provided, shall be levied against them.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1981, c. 501, §§35,36 (AMD). 1997, c. 398, §L8 (AMD). 2003, c. 322, §§22-25 (AMD).

**§834. FISCAL YEAR**

The fiscal year of a credit union shall end as of the close of business on the last business day of December. [1975, c. 500, §1 (NEW).]

## SECTION HISTORY

1975, c. 500, §1 (NEW).

**§835. REPORTS TO SUPERINTENDENT**

*(REPEALED)*

## SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §26 (RP).

**§836. INSURANCE OF SHARES**

**1. Requirement.** Every credit union authorized to do business in this State shall insure shares with the National Credit Union Administration or the successor to such federal agency.

[ 1997, c. 108, §12 (AMD) .]

**2. Transition period.**

[ 2003, c. 322, §27 (RP) .]

**3. Failure to obtain insurance.**

[ 2003, c. 322, §28 (RP) .]

**4. Applicable law.** A credit union insured pursuant to subsection 1 shall have the power and duty to comply with all statutes and regulations governing insurance of shares by the National Credit Union Administration; provided that nothing contained in this section shall be construed as repealing, modifying or impairing any powers, duties, rights or responsibilities of the superintendent, or of the credit union so insured, under the provisions of this Title.

[ 1975, c. 500, §1 (NEW) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). RR 1997, c. 2, §37 (COR). 1997, c. 108, §12 (AMD). 2003, c. 322, §§27,28 (AMD).

**Chapter 84: MANAGEMENT AND OPERATIONS****§841. MANAGEMENT IN GENERAL**

The management and operations of a credit union must be conducted in accordance with the provisions of Title 13-C, except as provided in this chapter and elsewhere in this Part. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §16 (COR).]

## SECTION HISTORY

1975, c. 500, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B16 (COR).

## §842. BOARD OF DIRECTORS

The management and control of the affairs of a credit union shall be vested in a board of directors, whose powers shall be exercised in accordance with the provisions of this section. [1975, c. 500, §1 (NEW).]

### 1. Number, election and qualifications.

A. The number of directors of a credit union may not be less than 5, all of whom must be members of the credit union. [1997, c. 566, §1 (AMD).]

B. The initial board of directors shall be elected at the first meeting of the members of the credit union, and by a vote of the members at each annual meeting thereafter. [1975, c. 500, §1 (NEW).]

C. The term of a director shall not be less than one year nor more than 3 years; provided that if the term is more than one year, the bylaws shall establish terms of office so that an equal number of directors, so far as possible, shall be elected each year. [1975, c. 500, §1 (NEW).]

D. Directors shall be sworn annually to the proper discharge and faithful performance of their duties. Such oaths shall be taken within 60 days of election to office, or such office shall become vacant. A record of every such qualification shall be preserved with the records of the credit union. [1975, c. 500, §1 (NEW).]

E. A director shall serve until a successor is elected and qualified. [1975, c. 500, §1 (NEW).]

F. If a director ceases to be a member of the credit union, his office shall thereupon become vacant. [1975, c. 500, §1 (NEW).]

[ 1997, c. 566, §1 (AMD) .]

**2. Powers and duties.** The board of directors shall manage the affairs, funds and records of the credit union and shall meet as often as necessary, but not less than once a month, notice of such meeting to be made in the manner prescribed in the bylaws. As set forth below, the special duties of the board of directors shall be:

A. To act upon applications for membership, or to appoint a membership committee of one or more membership officers from among the members of the credit union, other than the treasurer, an assistant treasurer or loan officer, who may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; provided that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or board may require; [1975, c. 500, §1 (NEW).]

B. To fix from time to time the maximum amount, both secured and unsecured, which may be loaned to any one member, except as limited by chapter 85, and to establish a written loan policy pursuant to section 851, which must be reviewed and ratified at least annually; [2003, c. 322, §29 (AMD) .]

C. To authorize the employment of such person or persons as may be necessary to carry on the business of the credit union; and to fix the compensation of such employees, including the treasurer; [1975, c. 500, §1 (NEW).]

D. To borrow money to carry on the functions of the credit union, subject to the limitation set forth in section 822; [1975, c. 500, §1 (NEW).]

E. To authorize the conveyance of property; [1975, c. 500, §1 (NEW).]

F. To purchase a blanket bond in an amount which is not less than an amount recommended by the superintendent, which shall be required of the treasurer and of each other officer and other employee having custody of funds or property; [1975, c. 500, §1 (NEW).]

G. To limit the number of shares that may be owned by one member or nonmember as provided in section 817, and such limitation must be applied uniformly; [1997, c. 108, §13 (AMD).]

H. To have charge of the investment of funds and to establish a written investment policy pursuant to section 861, which must be reviewed and ratified at least annually; [2003, c. 322, §30 (AMD).]

I. To perform such other duties as the members may from time to time require; [1975, c. 500, §1 (NEW).]

J. To appoint a supervisory committee of not less than 3 members, not more than one member of which may be a director. If the duties of the supervisory committee are conducted by an independent public accountant and the board has contracted for an annual audit by an independent public accountant pursuant to section 844, a supervisory committee need not be appointed; [2003, c. 322, §31 (AMD).]

K. To appoint a credit committee of not less than 3 members, or establish a written loan policy which provides for the designation of one or more loan officers in lieu of a credit committee and with all loans subject to ratification by the full board; [1983, c. 51, §4 (RPR).]

L. To appoint an executive committee, when the bylaws so provide, consisting of not less than 3 members of the board with authority to invest funds or borrow in the name of the credit union, except that the board may establish a written investment policy which provides for the designation of a qualified individual to have charge of making investments subject to ratification by the full board; [1983, c. 51, §4 (RPR).]

M. To suspend any or all members of the credit and supervisory committees for failure to perform their duties; [1975, c. 500, §1 (NEW).]

N. To fill vacancies occurring between annual meetings in the board of directors and in the credit committee and supervisory committee until the election or appointment and qualification of their successors; [1975, c. 500, §1 (NEW).]

O. To establish and provide for compensation of loan officers appointed by the credit committee, and of auditing assistance requested by the supervisory committee; [1975, c. 500, §1 (NEW).]

P. To designate a depository or depositories for the funds of the credit union; [1975, c. 500, §1 (NEW).]

Q. To declare dividends in the way and manner provided in the bylaws and in accordance with this Part; [1975, c. 500, §1 (NEW).]

R. To determine from time to time the rate of interest consistent with the laws of this State which shall be charged on loans; and to determine from time to time the amount of interest rebate and the interval on which such rebate if any, shall be computed; and [1975, c. 500, §1 (NEW).]

S. To perform or authorize any action consistent with this Part not specifically reserved by the bylaws for the members. [1975, c. 500, §1 (NEW).]

[ 2003, c. 322, §§29-31 (AMD) .]

**3. Compensation.** No member of the board of directors shall receive any compensation for his services as a member of said board, or as a member of any committees of the credit union.

[ 1975, c. 500, §1 (NEW) .]

**4. Director as a committee member.** No director of a credit union shall be a member of both the credit and the supervisory committees of the credit union, unless the number of members in the credit union is less than 11.

[ 1975, c. 500, §1 (NEW) .]

**5. Comakers of loans.**

[ 2003, c. 322, §32 (RP) .]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1983, c. 51, §4 (AMD). 1997, c. 108, §13 (AMD).  
1997, c. 566, §1 (AMD). 2003, c. 322, §§29-32 (AMD).

**§843. OFFICERS AND EMPLOYEES****1. Election.**

A. The directors, at their first meeting after the annual meeting of the members, shall elect from their own number the board officers specified in the bylaws. [1983, c. 51, §5 (AMD).]

B. Those persons elected in paragraph A shall be the officers of the corporation, and shall hold office until their successors are elected and qualified. [1975, c. 500, §1 (NEW).]

[ 1983, c. 51, §5 (AMD) .]

**2. Bond.**

A. The treasurer and all other officers and employees of a credit union having access to the cash or negotiable securities in its possession shall each give bond, including faithful performance clause, to the credit union in such amount and with such surety or sureties and conditions as the superintendent may prescribe, and shall file with the superintendent an attested copy thereof. [1975, c. 500, §1 (NEW) .]

B. The treasurer and any other officers and employees required to give bond may be included in one or more blanket or schedule bonds. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**3. Compensation.** The treasurer, or any other officer serving in the capacity of general manager, may be compensated in such amount as the board of directors may from time to time determine.

[ 1975, c. 500, §1 (NEW) .]

**4. Benefits.** A credit union may provide employee benefits, including retirement benefits, to its employees and officers. The kind and amount of these benefits must be reasonable given the credit union's size and financial condition and the duties of the employees and officers. A credit union investing to fund an employee benefit plan obligation is not subject to the investment limitations of section 862 and may purchase an investment that would otherwise be impermissible if the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan and the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan. The superintendent may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 468, §1 (NEW) .]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1983, c. 51, §5 (AMD). 2005, c. 468, §1 (AMD).

## §844. SUPERVISORY COMMITTEE OR INDEPENDENT PUBLIC ACCOUNTANT

**1. Duties of supervisory committee.** If a supervisory committee is appointed pursuant to section 842, subsection 2, the supervisory committee shall keep informed fully and at all times as to the financial condition of the credit union, shall examine or cause to be examined carefully the cash and accounts of the credit union annually, and shall report to the board of directors its findings, together with its recommendations. The supervisory committee shall hold meetings at least once each quarter and shall keep records of the meetings. The supervisory committee shall make an annual report at the annual meeting of members of the credit union.

[ 2003, c. 322, §33 (AMD) . ]

**1-A. Duties of independent public accountant.** If the board of directors employs an independent public accountant, the annual audits must be conducted pursuant to section 453. Verification of share, deposit and loan accounts must be conducted pursuant to this section.

[ 2003, c. 322, §33 (NEW) . ]

### 2. Verification of share, deposit and loan accounts.

A. At least once in every 2 years, the supervisory committee or the independent public accountant shall verify or cause to be verified the share, deposit and loan accounts of members of the credit union and a report of the verification must be kept on file and available to be reviewed at the time of the next examination or upon request by the superintendent.

(1) If the verification is performed by the supervisory committee, a controlled verification of 100% of the members' share, deposit and loan accounts must be made.

(2) If the verification is performed by a certified public accountant, the auditor may choose the verification method set forth in subsection 1 or a sampling method sufficient in both number and scope on which to base conclusions concerning the validity of such records. [ 2003, c. 322, §33 (AMD) . ]

B. If the superintendent determines such verification inadequate, the superintendent may cause the bureau to verify such accounts; and the bureau must have full access to every aspect of the credit union's activities and to all books, papers, vouchers, resources and all other records and property belonging to said credit union, whether in its immediate possession or otherwise, for the purpose of facilitating such verification. [ 2001, c. 211, §19 (AMD) . ]

C. Expenses incurred by the superintendent in any such verification must be paid by the credit union, to be credited and used as provided in section 214. [ 2001, c. 211, §19 (AMD) . ]

[ 2003, c. 322, §33 (AMD) . ]

### 3. Meetings.

[ 2003, c. 322, §33 (RP) . ]

### 4. Annual report.

[ 2003, c. 322, §33 (RP) . ]

**5. Exception.** Notwithstanding the provisions of subsections 1 and 1-A, any credit union that has total assets in excess of \$100,000,000 must employ an independent public accountant to conduct an annual audit of the credit union in accordance with section 453.

[ 2009, c. 228, §8 (AMD) . ]



**6. Rulemaking.** The superintendent may adopt rules to further define the duties of the supervisory committee. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 322, §33 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §12 (AMD). 2001, c. 211, §19 (AMD). 2003, c. 322, §33 (AMD). 2009, c. 228, §8 (AMD).

## §845. CREDIT COMMITTEE

**1. Powers and duties.** If a credit committee is appointed pursuant to section 842, subsection 2, the credit committee shall:

- A. Hold meetings at least once in each month; [1975, c. 500, §1 (NEW) .]
- B. Act on all applications for loans to members; [1975, c. 500, §1 (NEW) .]
- C. Approve in writing all personal loans granted and the security, if any, pledged for personal loans; and [2003, c. 322, §34 (AMD) .]
- D. Submit to the board of directors all applications for loans to be secured by mortgages of real estate, with its recommendations on the applications, which must include a signed appraisal as to its best judgment of the value of the real estate involved. [2003, c. 322, §34 (AMD) .]

[ 2003, c. 322, §34 (AMD) .]

### 2. Loan officers.

- A. The board of directors may appoint one or more loan officers. [1991, c. 386, §23 (AMD) .]
- B. The board of directors may delegate to the loan officer or officers the authority that is within the limits established under a written loan policy. The authority granted to any loan officer must be included in the minutes of the meetings of the board of directors. [1991, c. 386, §23 (AMD) .]
- C. Each loan officer shall furnish to the board of directors or credit committee a record of each application acted upon by that loan officer at the next meeting of the board of directors or committee after the date of filing of the application. If there is a credit committee, all applications not approved by the loan officer must be reviewed by the credit committee. The approval of a majority of the members who are present at the meeting when such review is undertaken is required to reverse the loan officer's decision, provided a majority of the full committee is present. If there is no credit committee, a member, upon written request, has the right of review by the board of directors of a loan application that has been denied. A loan officer may not disburse funds of the credit union for any loan approved by that loan officer in the capacity as loan officer. [1991, c. 649, (AMD) .]

[ 1991, c. 649, (AMD) .]

**3. Personal loans.** No personal loan, other than those approved by loan officers, shall be made unless a majority of the members of the credit committee who are present at a meeting when the loan application is considered vote to approve said loan. A quorum of the credit committee at such meeting shall be at least 2/3 of the members of the committee.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1991, c. 386, §23 (AMD). 1991, c. 649, (AMD). 2003, c. 322, §34 (AMD).

## §846. MEETINGS OF THE MEMBERS

**1. Time and notice.** The annual meeting of the members of a credit union must be held at such time and place as the board of directors may determine, but not later than 180 days after the close of the fiscal year. Special meetings may be called at any time by a majority of the directors, and must be called by the clerk upon written request of 25 members or 5% of the total members entitled to vote as of the date of request, whichever number is greater. Notwithstanding this section, the maximum number of members required to call a special meeting may not exceed 500. Notice of all meetings of the members must be given in the manner prescribed in the bylaws.

[ 2003, c. 322, §35 (AMD) .]

**2. Voting.** A member may not be entitled to vote by proxy, except in a vote for dissolution or merger, or have more than one vote; and a member under the age of 18 may be entitled to vote, subject to conditions prescribed in the bylaws. A fraternal organization, voluntary association, partnership or corporation having membership in a credit union may cast one vote at any of the meetings of the credit union by a duly delegated agent.

[ 2007, c. 79, §10 (AMD) .]

**3. Lending limitations; dividends.** The members at each annual meeting may fix the maximum amount to be loaned to any one member and, upon recommendation of the board of directors, may declare dividends in accordance with section 833.

[ 1975, c. 500, §1 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 51, §6 (AMD). 1995, c. 512, §2 (AMD).  
2003, c. 322, §35 (AMD). 2007, c. 79, §10 (AMD).

## §847. EXPULSION OF MEMBERS

**1. Grounds for expulsion.** The board of directors may expel from the credit union any member who has not carried out his engagement with it, or who has been convicted of a criminal offense, or who neglects or refuses to comply with the provisions of this Part or the bylaws of the credit union, or who has deceived the credit union or a committee thereof with regard to the use of borrowed money; but no member shall be expelled until he has been informed in writing of the charges against him and until an opportunity has been given him, after reasonable notice, to be heard thereon.

[ 1975, c. 500, §1 (NEW) .]

**2. Return of paid-in shares.** The amounts paid in on shares by members who have withdrawn or have been expelled shall be paid to them in the order of withdrawal or expulsion, but only as funds therefor become available and after deducting any amounts due from such members to the credit union.

[ 1975, c. 500, §1 (NEW) .]

**3. Liability unaffected by expulsion.** Such expulsion shall not operate to relieve a member from any outstanding liability to the credit union.

[ 1975, c. 500, §1 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §848. AMENDMENT OF BYLAWS AND CHARTER

**1. Procedure.** Amendments of the bylaws may be adopted, and amendments of the charter requested, by the affirmative vote of 2/3 of the members of the board of directors at any duly held meeting thereof, if the members of the board have been given at least 7 days' notice of said meeting and the notice has contained a copy of the proposed amendment or amendments.

[ 1975, c. 500, §1 (NEW) . ]

**2. Superintendent's approval.** No amendments to the bylaws or charter of a credit union shall become effective without the written approval of the superintendent.

[ 1975, c. 500, §1 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW) .

## Chapter 85: LOANS

### §851. LOANS IN GENERAL

**1. Authorization.** A credit union may make, sell, purchase, arrange, participate in, invest in and otherwise deal in loans to its members for any purpose in accordance with the provisions of this chapter.

[ 2003, c. 322, §36 (AMD) . ]

**2. Applicability of other sections.** In addition, a credit union is subject to sections 432, 433, 435 and 436.

[ 2003, c. 322, §36 (AMD) . ]

**3. Approvals required.** The credit committee provided for in section 845 shall approve all loans to members made by the credit union. In addition, the approval of the credit union's board of directors or executive committee shall be required for all loans other than personal loans to members.

[ 1975, c. 500, §1 (NEW) . ]

**4. Written loan policy.** The board of directors shall establish a written loan policy, which must be reviewed and ratified at least annually, that addresses at a minimum the following:

A. Individual lending officer authority; [2003, c. 322, §36 (NEW) . ]

B. Loan mix and diversification; [2003, c. 322, §36 (NEW) . ]

C. Loan quality parameters; and [2003, c. 322, §36 (NEW) . ]

D. Delegation of authority to officers and committees responsible for administering the portfolio.  
[2003, c. 322, §36 (NEW) . ]

[ 2003, c. 322, §36 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §L9 (AMD). 2003, c. 322, §36 (AMD) .

## §852. LOAN APPLICATIONS

**1. General procedures.** All applications for loans shall be made in writing, and shall state the purpose for which the loan is desired and the security, if any, offered.

[ 1975, c. 500, §1 (NEW) .]

**2. Real estate mortgage loans.**

[ 2003, c. 322, §37 (RP) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §37 (AMD).

## §853. UNSECURED LOANS

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §29 (AMD). 1983, c. 51, §7 (RP).

## §854. LOANS

**1. Authorization; limitations.** It is the duty of the board of directors to establish the policies of the credit union with respect to the granting of loans and the extending of lines of credit, including the maximum amount that may be loaned to any one member. A loan may not be made to any member in an aggregate amount in excess of 10% of the credit union's total assets. Any loan made in violation of this subsection is subject to the remedies prescribed in section 465-A.

[ 1991, c. 681, §4 (AMD) .]

**2. Exception.** Loans fully secured by a pledge of shares of a credit union may be made without limitation as to amount.

[ 1983, c. 51, §8 (RPR) .]

**3. Rulemaking.** The superintendent may adopt rules to administer and carry out this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 322, §38 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 51, §8 (RPR). 1991, c. 681, §4 (AMD). 2003, c. 322, §38 (AMD).

## §855. REAL ESTATE MORTGAGE LOANS

**1. Limitations.** A credit union may make loans to its members secured by a mortgage on real estate located within this State, subject to the following conditions and limitations.

A. The total liability of any member upon loans within this section shall be as established in section 854, subsection 1. [1985, c. 94, (RPR) .]

B. No loan made pursuant to this section may exceed 90% of the appraised value of the property mortgage, as determined by the credit committee. Loans pursuant to this section may be made in an amount not exceeding 100% of the appraised value of the mortgage property if at least the top 20% of the loan is insured by a mortgage guarantee insurer licensed to do business in this State or if the loan is insured or guaranteed by the Federal Housing Administration or any other state or federal agency. [1985, c. 94, (RPR).]

C. The note or other obligation evidencing a first mortgage loan shall require monthly payment of the interest and principal thereon sufficient to repay the entire loan within a period not exceeding 30 years, except that this provision does not apply to real estate loans insured by the Federal Housing Administration. [1985, c. 94, (NEW).]

D. The note or other obligation evidencing a loan other than a first mortgage loan shall require monthly payment of the interest and principal thereon sufficient to repay the entire loan within a period not exceeding 15 years. [1985, c. 94, (NEW).]

[ 1985, c. 94, (RPR) .]

**2. Loans to secure future advances.** An interest in real estate that may be mortgaged to a credit union pursuant to this section may be mortgaged in the manner set forth in section 436 or in the manner set forth in Title 33, section 505 subject to the terms and conditions set forth in that section. An interest in real estate that may be mortgaged to a credit union organized under the laws of the United States may be mortgaged in the manner set forth in section 436 or in the manner set forth in Title 33, section 505 subject to the terms and conditions set forth in that section. The maximum loan terms established in subsection 1, paragraphs C and D, apply to each loan or advance secured by a mortgage under section 436 or Title 33, section 505.

[ 1993, c. 229, §2 (AMD) .]

### **3. Aggregate mortgage loan limitation.**

[ 1991, c. 110, §1 (RP) .]

**4. Loan policy.** The board of directors shall establish a policy addressing real estate mortgage loans, including home equity loans. At a minimum, this policy must address the following:

A. Aggregate limitation on total real estate mortgage loans as a percentage of total loans and total assets; [1991, c. 110, §2 (NEW).]

B. Maximum loan-to-value standards; [1991, c. 110, §2 (NEW).]

C. Types of property eligible for loans; [1991, c. 110, §2 (NEW).]

D. Guidelines for selecting real estate appraisers; [1991, c. 110, §2 (NEW).]

E. Maximum debt-to-income ratios for borrowers; and [1991, c. 110, §2 (NEW).]

F. All other standards essential to the prudent management of real estate lending including the responsibility of 3rd-party contractors who prepare documentation for loans on behalf of the credit union. [1991, c. 110, §2 (NEW).]

This policy must be reviewed and ratified by the board of directors at least annually.

[ 1991, c. 110, §2 (NEW) .]

#### **SECTION HISTORY**

1975, c. 500, §1 (NEW). 1985, c. 94, (RPR). 1991, c. 110, §§1,2 (AMD). 1993, c. 229, §2 (AMD).

## §856. LOANS TO OTHER CREDIT UNIONS

Subject to the approval of its board of directors, a credit union may make loans to other credit unions located in this State; provided that the aggregate loans outstanding at any one time to any one credit union shall not exceed 10% of the share capital and surplus of the lending credit union. [1975, c. 500, §1 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §857. LINES OF CREDIT

*(REPEALED)*

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 133, §1 (RP).

## §857-A. LINES OF CREDIT

**1. Authorization; limitations.** Subject to the limitations set forth in sections 854 and 855, the credit committee of a credit union may approve a line of credit to a member upon written application by the member, and advances may be made to that member within the limits of that extension of credit. A line of credit given pursuant to this section must be reviewed periodically by a loan officer or the credit committee in accordance with the policy established under section 854.

[ 1995, c. 512, §3 (AMD) .]

**2. Repayment.** Repayment of advances made pursuant to a line of credit shall be on such terms as shall be mutually agreed upon by the member and the credit union.

[ 1979, c. 133, §2 (NEW) .]

### SECTION HISTORY

1979, c. 133, §2 (NEW). 1987, c. 405, §31 (AMD). 1995, c. 512, §3 (AMD).

## §858. FEDERAL FUNDS LOANS OR SALES

A credit union may lend or sell to any member bank of the Federal Reserve System, or to any bank, savings bank or savings and loan association whose deposits are insured by the Federal Deposit Insurance Corporation. [1997, c. 398, Pt. L, §10 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §110 (AMD).

## Chapter 86: INVESTMENTS

## §861. INVESTMENTS IN GENERAL

**1. Applicable law.** In addition to the loans a credit union is authorized to make pursuant to chapter 85, a credit union may invest its funds in accordance with the provisions of this chapter.

[ 1975, c. 500, §1 (NEW) .]

**2. Director approval required.** Investments pursuant to this chapter shall only be made with the approval of the board of directors or executive committee of the credit union.

[ 1975, c. 500, §1 (NEW) . ]

**3. Written investment policy.** A credit union's board of directors shall establish a written investment policy, which must be reviewed and ratified at least annually, that addresses at a minimum the following:

- A. Investment quality parameters; [ 2003, c. 322, §39 (NEW) . ]
- B. Investment mix and diversification; [ 2003, c. 322, §39 (NEW) . ]
- C. Investment maturities; and [ 2003, c. 322, §39 (NEW) . ]
- D. Delegation of authority to officers and committees responsible for administering the portfolio. [ 2003, c. 322, §39 (NEW) . ]

[ 2003, c. 322, §39 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 2003, c. 322, §39 (AMD).

## §862. DEPOSITS, NOTES AND BONDS

A credit union may invest in: [ 1975, c. 500, §1 (NEW) . ]

**1. Deposits in insured institutions.** Deposits or share accounts in any financial institution or credit union, as long as deposits or shares in the financial institution or credit union are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

[ 2003, c. 322, §40 (AMD) . ]

### **2. Legal investments for savings banks.**

[ 1987, c. 405, §32 (RP) . ]

**2-A. Other legal investments for credit unions.** A credit union may legally invest in the following.

A. Credit unions are authorized to invest in government unit bonds:

- (1) The bonds and other obligations of the United States or the bonds and other obligations or participation certificates issued by any agency, association, authority or instrumentality created by Congress or any executive order;
- (2) The bonds and other obligations issued or guaranteed by any state or by any instrumentality or agency of any state, or by any political subdivision of any state; provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent;
- (3) The bonds and other obligations issued or guaranteed by this State, or issued by an instrumentality or agency of this State or any political subdivision of this State which is not in default on any of its outstanding funded obligations; and
- (4) The bonds and other obligations issued or guaranteed by the Dominion of Canada, or issued or guaranteed by any province or political subdivision of a province; provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent and are payable in United States funds. [ 1987, c. 405, §33 (NEW) . ]

B. Credit unions are allowed to invest in the bonds and other obligations of any United States corporation, provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent. Not more than 2% of the shares of a credit union shall be invested in the securities of any one such corporation and the total of all such investments shall not exceed 20% of the shares of a credit union. [1987, c. 405, §33 (NEW).]

C. Credit unions are authorized to invest in the following:

(1) The bonds, debentures, acceptances and commercial paper of any financial institution authorized to do business within this State, incorporated under the laws of this State or the United States and of any financial institution holding company registered under chapter 101. For the purposes of this subsection, the out-of-state owners of Maine financial institutions or financial institution holding companies are not to be considered Maine financial institutions or financial institution holding companies;

(2) The bonds, debentures, acceptances and commercial paper of banks or bank holding companies principally domiciled outside the State, provided that the bank's or holding company's bonds and debentures are rated in the 3 highest grades by a rating service approved by the superintendent. In the case of commercial paper, the commercial paper should be rated in the 2 highest grades. In the case of acceptances, the bank's or holding company's ratings of its other obligations so listed should be within the above parameter. These banks should also be insured by the Federal Deposit Insurance Corporation and holding companies should be registered under the Bank Holding Company Act of 1956; and

(3) Capital notes or debentures issued by any savings bank or savings and loan association chartered under the laws of any state, or of the United States, or of the Commonwealth of Puerto Rico, provided that these institutions are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or issued by a thrift institution holding company registered under the United States Housing Act, Section 408. These obligations shall be rated in the 3 highest grades by a rating service approved by the superintendent.

A credit union shall not acquire obligations described in this paragraph both by way of investment as security for loans in excess of 30% of its shares; nor shall it acquire such obligations of any one bank or thrift, or bank or thrift holding company, not principally domiciled in this State in excess of 5% of its shares. [1987, c. 405, §33 (NEW).]

D. A credit union may invest in mutual funds or trusts, provided that all of the investments of those mutual funds or trusts are permissible investments under this section. [1987, c. 405, §33 (NEW).]

E. A credit union may invest in United States or State Government guaranteed loans. [1997, c. 398, Pt. L, §11 (AMD).]

F. The superintendent may by rule, issued pursuant to section 251, raise or lower the limitations as to percentage of securities prescribed under this section or prescribe such additional limitations as in his judgment conditions warrant. [1987, c. 405, §33 (NEW).]

[ 1997, c. 398, Pt. L, §11 (AMD) .]

**3. Notes of liquidating credit union; limitation.** The purchase of notes from a liquidating credit union; provided that such purchase shall not exceed 5% of the purchasing credit union's share capital and surplus; and

[ 1983, c. 51, §10 (AMD) .]

#### 4. Sale of assets.

[ 2001, c. 211, §20 (RP) .]



**5. Federal Home Loan Bank and National Credit Union Administration Central Liquidity Facility membership.** A credit union may become a member and stockholder of the following:

A. A Federal Home Loan Bank within the Federal Home Loan Bank district where that credit union is located; and [1995, c. 512, §4 (NEW).]

B. The National Credit Union Administration Central Liquidity Facility, subject to the conditions and limitations prescribed under the Federal Credit Union Act, 12 United States Code, Sections 1751 to 1795k (1988). [1995, c. 512, §4 (NEW).]

[ 1995, c. 512, §4 (AMD) .]

This section may not be construed to authorize a credit union to purchase or invest in the stock of any corporation, except for the purchase of stock in the Federal Home Loan Bank or the National Credit Union Administration Central Liquidity Facility for purposes of establishing membership in those systems. [1995, c. 512, §5 (AMD).]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1979, c. 429, §13 (AMD). 1983, c. 51, §§9-11 (AMD). 1985, c. 533, §§1,2 (AMD). 1987, c. 405, §§32,33 (AMD). 1991, c. 386, §§24,25 (AMD). 1995, c. 512, §§4,5 (AMD). 1997, c. 398, §L11 (AMD). 2001, c. 211, §20 (AMD). 2003, c. 322, §40 (AMD).

## **§863. REAL ESTATE FOR OFFICE FACILITIES**

**1. Authorizing.** A credit union may invest in real estate by the purchase of improved or unimproved real estate, and in the erection or improvement of buildings thereon together with fixtures and equipment, for the purpose of providing offices for the transaction of its business. Such buildings may include space for rental purposes.

[ 1975, c. 500, §1 (NEW) .]

**2. Limitation.** The cost to the credit union of such lands, buildings, fixtures and equipment shall not exceed 50% of such credit union's total surplus at the time such investment is made; provided that the superintendent may, for good cause shown, upon application by the credit union in writing, approve an amount in excess of said 50% of total surplus, subject to such conditions as the superintendent may deem necessary.

[ 1975, c. 500, §1 (NEW) .]

**SECTION HISTORY**

1975, c. 500, §1 (NEW).

## **§864. SERVICE CORPORATIONS**

**1. Authorization.** A credit union may invest, individually or with other credit unions or other entities, in service corporations as defined in section 131.

[ 1993, c. 99, §2 (RPR) .]

**2. Limitations.** A credit union may invest 10% of its share capital and surplus in any service corporation only if:

A. The service corporation is structured to limit the credit union's exposure to loss; and [2005, c. 82, §11 (AMD).]

B. The service corporation primarily serves credit unions and the membership of affiliated credit unions. A service corporation formed after July 31, 1994 primarily serves credit unions and the membership of affiliated credit unions within the meaning of this paragraph if at least 75% of the services provided within this State are to credit unions and members of credit unions. [1993, c. 655, §1 (AMD).]

The superintendent may approve an amount less than or in excess of 10%, subject to such terms and conditions as the superintendent determines necessary.

[ 2005, c. 82, §11 (AMD) .]

**3. Applicability of section 445.** A credit union or credit unions seeking to organize as or invest in a service corporation shall do so in accordance with the provisions of section 445 only if the controlling interest in the service corporation is owned by credit unions authorized to do business in this State.

[ 1993, c. 99, §3 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1993, c. 99, §2 (AMD). 1993, c. 99, §3 (AMD).  
1993, c. 655, §1 (AMD). 2005, c. 82, §11 (AMD).

## §865. ADDITIONAL AUTHORITY

Credit unions organized under private or special laws shall have the authority granted by this chapter, in addition to such other investment authority as they now possess. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## Chapter 87: DISSOLUTION, MERGERS AND CONVERSIONS

## §871. DISSOLUTION

*(REPEALED)*

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 429, §14 (AMD). 2003, c. 322, §41 (RP).

## §871-A. DISSOLUTION

**1. Voluntary dissolution.** This subsection governs the voluntary dissolution of a credit union.

A. A recommendation may be made that a credit union be dissolved and voluntarily liquidated by majority vote of either the entire membership of the credit union entitled to vote or the board of directors of the credit union. Within 10 days after recommendation, the credit union shall notify the superintendent, the federal agency that insures the credit union accounts and the credit union members in writing of the recommendation and the reasons for dissolution. If the entire membership votes to dissolve and voluntarily liquidate the credit union, then no additional votes of the entire membership need be taken. If the board of directors of the credit union votes to dissolve and voluntarily liquidate the credit union, then a special meeting of the credit union's entire membership must be called, no sooner than 10 days after notice has been mailed to the superintendent. A majority of the entire membership of the credit union entitled to vote must vote to dissolve and voluntarily liquidate the credit union. Members may cast their votes by proxy on forms prepared by the board of directors and mailed with the meeting notice.

[2003, c. 322, §42 (NEW).]

B. Whenever there is a recommendation of dissolution pursuant to paragraph A, the board of directors shall provide the superintendent with a plan of dissolution. The plan of dissolution must set forth the method and schedule for terminating the business of the credit union and may provide for a restriction on withdrawal of shares or withdrawal of share certificates. Before the 2nd membership vote required in paragraph A may be taken, the board must receive the superintendent's approval of the plan of dissolution. [ 2003 , c . 322 , §42 (NEW) . ]

C. The superintendent may approve the dissolution of a credit union recommended by a majority of the entire board of directors but approved by less than a majority of all members if the superintendent finds, upon the written and verified application of the board, that:

- (1) The board mailed written notice of the meeting to consider dissolution to all members qualified to vote;
- (2) The notice disclosed the purpose of the meeting and that approval of dissolution might be sought pursuant to this paragraph;
- (3) A majority of the votes cast by the members were in favor of dissolution; and
- (4) The board has an acceptable plan of dissolution. [ 2003 , c . 322 , §42 (NEW) . ]

D. If the superintendent approves dissolution, either by vote of the board or vote of the members, the credit union shall immediately cease to do business, except for the express purposes of liquidation including the discharging of debts, collecting on loans, distributing assets and every other act necessary to wind up and liquidate the business. It may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. [ 2003 , c . 322 , §42 (NEW) . ]

E. The board of directors shall use the assets of the credit union to pay claims in the following order:

- (1) Claimants whose claims are secured must receive their security. To the extent their respective claims exceed the value of the security for those claims, as determined to the satisfaction of the receiver, they each have an unsecured claim against the credit union having priority as provided in subparagraph (2); and
- (2) Unsecured claims against the liquidation estate that are proved to the satisfaction of the receiver have priority in the following order:
  - (a) Administrative costs and expenses of liquidation;
  - (b) Claims for wages and salaries, including vacation, severance and sick leave pay;
  - (c) Taxes legally due and owing to the United States or any state or subdivision of the United States or state;
  - (d) Debts due and owing to the State and the United States, including the National Credit Union Administration;
  - (e) General creditors, and secured creditors to the extent that the secured creditors' respective claims exceed the value of the security for those claims;
  - (f) Pro rata distribution to members in proportion to the respective amount of their deposits and shares;
  - (g) In a case involving liquidation of a corporate credit union, membership capital of the corporate credit union;
  - (h) In a case involving liquidation of a designated community development credit union, any outstanding secondary capital accounts issued pursuant to state law; and
  - (i) In a case involving liquidation of a corporate credit union, paid-in capital. [ 2003 , c . 322 , §42 (NEW) . ]

F. Priorities for payment of claims under paragraph E are to be based on the circumstances that exist on the date of the liquidation. [ 2003 , c . 322 , §42 (NEW) . ]

G. If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, the claim must be considered a general creditor claim under paragraph E, subparagraph (2), division (e) and not a cost or expense of liquidation under paragraph E, subparagraph (2), division (a). [ 2003 , c. 322 , §42 (NEW) . ]

H. All unsecured claims of any category or class or priority described in paragraph E, subparagraph 2, divisions (a) to (i) must be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment must be made pro rata. Notwithstanding anything to the contrary in this section, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraph E, subparagraph (2), divisions (a) to (e) as the receiver believes are reasonably necessary to conduct the liquidation, as long as the receiver determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full on all allowed claims described in paragraph E, subparagraph (2), divisions (a) to (i), the surplus must be distributed pro rata to the credit union's members. [ 2003 , c. 322 , §42 (NEW) . ]

I. A credit union liquidating voluntarily may not continue in existence for more than 3 years after approval of dissolution, unless an extension is granted by the superintendent for good cause shown in an application filed prior to expiration of the 3-year period. [ 2003 , c. 322 , §42 (NEW) . ]

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the credit union shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

- (1) The name and address of the credit union;
- (2) The date dissolution was approved;
- (3) A statement of how dissolution was approved;
- (4) A report of liquidating activities; and
- (5) Such other information as the superintendent may require.

Dissolution is effective upon the superintendent's acceptance of articles of dissolution for filing with the bureau. At the time of the superintendent's acceptance of the filing, the credit union ceases to exist, except for the purposes of suits or other proceedings provided for by law. [ 2003 , c. 322 , §42 (NEW) . ]

[ 2003 , c. 322 , §42 (NEW) . ]

**2. Involuntary dissolution.** This subsection governs the involuntary dissolution of a credit union.

A. If, upon examination of a credit union, the superintendent determines that the credit union is insolvent or that the credit union is operating in an unsafe or unsound manner, the superintendent may appoint a receiver who shall proceed to close the credit union. The credit union shall remain in existence for the purpose of winding up its affairs. [ 2003 , c. 322 , §42 (NEW) . ]

B. The person appointed by the superintendent as a receiver may be the superintendent, a deputy or any other person, including the agency insuring the credit union's accounts pursuant to section 836, as the superintendent may choose, and a certified copy of the order making such an appointment is evidence of the appointment. The receiver need not post a bond. The receiver has the power and authority provided in this Title and any other powers and authority as may be expressed in the order of the superintendent. [ 2003 , c. 322 , §42 (NEW) . ]

C. If the superintendent or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses of the superintendent or deputy as receiver must be paid by the credit union. If another person is appointed, then the compensation of the receiver must be paid from the assets of that credit union. [ 2003 , c. 322 , §42 (NEW) . ]

D. In the event that the federal agency insuring the credit union's shares or accounts pursuant to section 836 accepts an appointment as receiver, the agency shall acquire both legal and equitable title to all assets, rights or claims and to all real and personal property of the credit union to the extent necessary for the agency to perform its duties as receiver under applicable federal law to effectuate the appointment. If the agency pays or makes available for payment the insured shares of a credit union by reason of actions taken pursuant to this section, the agency is subrogated to the rights of all the members of the credit union, whether or not it has become receiver of the credit union, in the same manner and to the same extent as it would be subrogated in the receivership of a credit union operating under a federal charter and insured by the agency. [ 2003 , c. 322 , §42 (NEW) . ]

E. Upon taking possession of the property and business of a credit union under this chapter, the receiver:

- (1) May collect money due to the credit union and do all acts necessary to conserve its assets and business and shall proceed to liquidate its affairs;
- (2) Shall collect all debts due and claims belonging to the credit union and may sell or compound all bad or doubtful debts;
- (3) May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the credit union;
- (4) May take, in the name of the credit union, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price;
- (5) May borrow money and issue evidence of indebtedness for the money. To secure the repayment of the indebtedness, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of the credit union, whether real, personal or mixed, superior to any charge for expenses of liquidation; and
- (6) May represent the credit union in lawsuits under the receiver's own name as receiver of the credit union. [ 2003 , c. 322 , §42 (NEW) . ]

F. The receiver shall use the assets of the credit union to pay claims in the following order:

- (1) Claimants whose claims are secured must receive their security. To the extent their respective claims exceed the value of the security for those claims, as determined to the satisfaction of the receiver, they each have an unsecured claim against the credit union having priority as provided in subparagraph (2); and
- (2) Unsecured claims against the liquidation estate that are proved to the satisfaction of the receiver have priority in the following order:
  - (a) Administrative costs and expenses of liquidation;
  - (b) Claims for wages and salaries, including vacation, severance and sick leave pay;
  - (c) Taxes legally due and owing to the United States, any state or any subdivision of the United States or any state;
  - (d) Debts due and owing to the State and the United States, including the National Credit Union Administration;
  - (e) General creditors, and secured creditors to the extent that the secured creditors' respective claims exceed the value of the security for those claims;
  - (f) Pro rata distribution to members in proportion to the respective amount of their deposits and shares;
  - (g) In a case involving liquidation of a corporate credit union, membership capital of the corporate credit union;
  - (h) In a case involving liquidation of a designated community development credit union, any outstanding secondary capital accounts issued pursuant to state law; and

(i) In a case involving liquidation of a corporate credit union, paid-in capital. [ 2003, c. 322, §42 (NEW) . ]

G. Priorities for payment of claims under paragraph F are based on the circumstances that exist on the date of the liquidation. [ 2003, c. 322, §42 (NEW) . ]

H. If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, the claim must be considered a general creditor claim under paragraph F, subparagraph (2), division (e) and not a cost or expense of liquidation under paragraph F, subparagraph (2), division (a). [ 2003, c. 322, §42 (NEW) . ]

I. All unsecured claims of any category or class or priority described in paragraph F, subparagraph (2), divisions (a) to (i) must be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment must be made pro rata. Notwithstanding anything to the contrary in this section, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraph F, subparagraph (2), divisions (a) to (e) as the receiver believes are reasonably necessary to conduct the liquidation, as long as the receiver determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full on all allowed claims described in paragraph F, subparagraph (2), divisions (a) to (i), the surplus must be distributed pro rata to the credit union's members. [ 2003, c. 322, §42 (NEW) . ]

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the receiver shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

- (1) The name and address of the credit union;
- (2) The date dissolution was ordered;
- (3) A statement of how dissolution was ordered;
- (4) A report of liquidating activities; and
- (5) Such other information as the superintendent may require.

Dissolution is effective upon the superintendent's acceptance of articles of dissolution for filing with the bureau. At that time the credit union ceases to exist, except for the purposes of suits or other proceedings provided for by law. [ 2003, c. 322, §42 (NEW) . ]

[ 2003, c. 322, §42 (NEW) . ]

#### SECTION HISTORY

2003, c. 322, §42 (NEW) .

## §871-B. APPLICABILITY OF CHAPTER

Notwithstanding any other provisions of law, the provisions of this chapter apply and supersede the provisions of laws relating to the dissolution, merger and conversion of credit unions organized under the laws of this State. [ 2003, c. 322, §42 (NEW) . ]

#### SECTION HISTORY

2003, c. 322, §42 (NEW) .

## §872. MERGERS AND CONSOLIDATIONS

### 1. Eligibility.

A. A credit union organized under provisions of the laws of this State, another state or federal laws may merge or consolidate into a credit union organized under the laws of the State with the approval of the superintendent obtained pursuant to section 252, and in accordance with such procedures as the superintendent may require. [ 2001, c. 211, §21 (AMD) . ]

B. If any credit union involved in the proposed merger is a federal credit union, such merger is subject to all applicable laws, rules and regulations of the United States. A credit union involved in the proposed merger that is organized under provisions of law of another state is subject to all applicable laws, rules and regulations of that state. [ 2001, c. 211, §21 (AMD) . ]

[ 2001, c. 211, §21 (AMD) . ]

**2. Plan and adoption.** The merger shall be pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger; and approved by the affirmative vote of a majority of the members voting in person or by proxy at meetings of each credit union called for that purpose or by written consent of the majority of the members of each credit union.

[ 1975, c. 500, §1 (NEW) . ]

**3. Compliance.** The superintendent shall not approve said merger unless the surviving credit union would be in compliance with all other laws of the State regulating the organization of credit unions.

[ 1975, c. 500, §1 (NEW) . ]

**4. Effective date; certificate.**

A. When the requirements as to approval have been met, including the approval of the superintendent and any Federal agency whose approval may be required under federal law for such merger or consolidation, the superintendent shall, issue an appropriate certificate which must be filed in all places where original organization certificates are required to be filed in this State. In all cases, the superintendent shall cancel the charters of those credit unions organized under the laws of this State which will cease to exist under the terms of the merger and file notice of such action in all places where organization certificates are required to be filed in this State. [ 1975, c. 500, §1 (NEW) . ]

B. The merger shall become effective upon filing of the certificates pursuant to paragraph A, unless a later effective date was set forth in the certificate. [ 1975, c. 500, §1 (NEW) . ]

[ 1975, c. 500, §1 (NEW) . ]

**5. Effect of merger.** Upon the issuance by the superintendent of a certificate to the surviving credit union, all property rights and interests of the merged credit union vest in the surviving credit union, without deed, endorsement or other instruments of transfer; and all debts, obligations and liabilities of the merged credit unions are assumed by the surviving credit union. Thereafter, the charter of any merged credit union is void, and existence of the merged credit union as a legal entity separate from the surviving credit union terminate. Sections 357 and 358 apply to such mergers.

[ 1997, c. 398, Pt. L, §12 (AMD) . ]

**SECTION HISTORY**

1975, c. 500, §1 (NEW). 1997, c. 398, §L12 (AMD). 2001, c. 211, §21 (AMD) .

## §872-A. AUTHORITY FOR EXPEDITED MERGERS, CONSOLIDATIONS AND ACQUISITIONS

Notwithstanding any other provision of law, or any charter, certificate of organization, articles of association, articles of incorporation or bylaw of any participating credit union, the superintendent may authorize a merger or consolidation of 2 or more credit unions or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, any other credit union following approval of a plan of merger, consolidation or acquisition by a majority vote of the boards of directors of the participating credit unions and upon receipt by the superintendent of certified copies of the authorizing resolutions adopted by the respective boards of directors. That merger, consolidation or acquisition shall become effective immediately if the superintendent believes that the action is necessary for the protection of members of the credit union or the public. Any person aggrieved by a merger, consolidation or acquisition pursuant to this section is entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. [1989, c. 646, (NEW).]

### SECTION HISTORY

1989, c. 646, (NEW).

## §873. CONVERSION: FEDERAL TO STATE CHARTER; OUT OF STATE TO STATE CHARTER

**1. Eligibility.** A credit union organized pursuant to provisions of federal law or organized under the laws of another state may become subject to this Part and receive a charter as a state-chartered credit union by making application in writing to the superintendent for such conversion. The superintendent may approve or disapprove such conversion in accordance with the criteria set forth in section 253 as long as, as a condition precedent to such approval, the credit union shows compliance with all applicable federal laws and regulations and laws and regulations of the state under which it is organized relating to such conversion.

[ 2009, c. 228, §9 (AMD) .]

**2. Issuance of charter.** Upon receiving approval from the superintendent, the credit union must be issued a charter under this Part, which fact must be certified by the superintendent to the Secretary of State; and, from and after the issuance of such charter, the credit union must be subject to the provisions of this Part and all rules issued under this Part.

[ 2009, c. 228, §9 (AMD) .]

**3. Applicability of other sections.** A credit union converting to a state charter pursuant to this section is subject to the provisions contained in sections 357 and 358 governing resulting institutions.

[ 1997, c. 398, Pt. L, §13 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §13 (AMD). 2009, c. 228, §9 (AMD).

## §874. CONVERSION: STATE TO FEDERAL CHARTER

A credit union organized under the general or special laws of this State may convert to a federally chartered credit union. The credit union must notify and provide the superintendent with a copy of the application filed with the National Credit Union Administration within 3 days of filing with the National Credit Union Administration. Approval of the members of the credit union for the conversion must be obtained in the manner set forth in section 342, subsection 6. Upon obtaining the approval, the credit union shall provide to the superintendent all necessary approvals and charters required by the National Credit Union



Administration and all federal laws and regulations applicable to the conversion. The superintendent shall notify the Secretary of State that the conversion has been effected. A copy of the approval or charter must accompany the notification. [2007, c. 79, §11 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 647, §10 (AMD). 2003, c. 322, §43 (AMD). 2007, c. 79, §11 (AMD).

### **§875. CONVERSION: CHANGE IN TYPE OF STATE CHARTER**

A credit union subject to the laws of this State may convert its charter to do business as a credit union into a charter to do business as a financial institution organized under chapter 32 if any plan of conversion authorized by this section is adopted and approved in accordance with the requirements of section 343. [1997, c. 398, Pt. K, §8 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §K8 (AMD).

### **§876. ACQUISITIONS**

A credit union organized under the laws of this State may acquire all or substantially all the assets of, or assume the liabilities of, any other credit union organized under provisions of the laws of this State, another state or federal laws or any financial institution authorized to do business in this State; provided that such purchase or sale pursuant to this section be executed in accordance with the requirements of section 355 and be subject to the provisions of sections 357 and 358. [2001, c. 211, §22 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §30 (RPR). 2001, c. 211, §22 (AMD).

### **§877. FEES FOR MERGERS, CONVERSIONS AND ACQUISITIONS**

An application made pursuant to sections 872, 872-A, 873, 875 or 876 may not be considered complete unless accompanied by an application fee payable to the Treasurer of State to be credited and used as provided in section 214. The superintendent shall establish the amount of the application fee, which may not exceed \$2,000. [1999, c. 218, §26 (AMD).]

#### SECTION HISTORY

1975, c. 666, §31 (NEW). 1999, c. 218, §26 (AMD).

## **Chapter 88: PROHIBITIONS**

### **§881. PROHIBITED PRACTICES**

All credit unions organized pursuant to or subject to the laws of this State, and the directors and officers of such credit unions, shall be subject to the prohibitions and restrictions provided for in chapter 46, except that the superintendent may, upon application and for good cause shown, permit an officer or director of one credit union to hold office in another credit union. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §882. USE OF TERM "CREDIT UNION"

**1. Use of term authorized.** A person, if duly authorized under the laws of this State, another state or the United States to conduct the business of banking as a credit union, may use as a part of the name or title under which it conducts business in this State the term "credit union." The superintendent may require the filing of supporting documentation relating to this paragraph in the form and manner and containing any information the superintendent may prescribe.

[ 2005, c. 82, §12 (NEW) .]

**2. Use of term prohibited.** Except as provided in subsection 1, a person may not use the term "credit union" as part of the name or title under which business is conducted or as a designation of such a business without prior written approval of the superintendent. In determining whether to grant written permission, the superintendent shall consider whether the business to be conducted is similar to the business of banking and whether using those terms or any derivatives of those terms could be deceptive or otherwise injurious to public interest.

[ 2005, c. 82, §12 (NEW) .]

**3. Violation; penalty.** A person who violates any provision of this section is subject to a civil penalty of not more than \$10,000 for each violation.

[ 2005, c. 82, §12 (NEW) .]

**4. Exception.** This section does not prohibit the use of any name by a person who received written permission from the superintendent to use the name prior to the effective date of this section.

[ 2005, c. 82, §12 (NEW) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1985, c. 647, §11 (AMD). 1997, c. 108, §14 (AMD). 2005, c. 82, §12 (RPR).

## Part 9: INDUSTRIAL BANKS

### Chapter 91: INDUSTRIAL BANKS

#### §911. DEFINITION

"Industrial bank" means a corporation organized under Title 9, Part 5 as repealed on October 1, 1975 and which was, on or before June 1, 1967, making loans and selling certificates of investment, either of fixed or uncertain term, and receiving payments in installments or otherwise, with or without an allowance of interest upon these installments. [1997, c. 2, §38 (COR).]

##### SECTION HISTORY

1975, c. 500, §1 (NEW). RR 1997, c. 2, §38 (COR).

#### §912. CAPITAL AND MANAGEMENT

**1. Stock: classes; par value.** The capital stock of an industrial bank shall have a par value \$100 for each share, and only one class of such stock shall be created.

[ 1975, c. 500, §1 (NEW) .]

**2. Management.** Except as otherwise provided in this chapter, the management and operations of an industrial bank must be conducted in accordance with the provisions of Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §17 (COR) .]

##### SECTION HISTORY

1975, c. 500, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B17 (COR).

#### §913. POWERS

In addition to the powers conferred upon corporations by the general corporations law of this State, an industrial bank shall have the power to: [1975, c. 500, §1 (NEW) .]

**1. Borrow and lend.** Borrow and to lend money, and discount notes and bills of exchange including trade acceptances;

[ 1975, c. 500, §1 (NEW) .]

**2. Investments.** Purchase, invest in, hold and sell such notes, bonds and securities as are legal for investments in accordance with the provisions of chapter 55.

[ 1975, c. 500, §1 (NEW) .]

**3. FHA insured loans.** Make such loans as are eligible for insurance pursuant to Title I of the National Housing Act, as amended, and to apply for and obtain insurance on said loans pursuant to said Act.

[ 1979, c. 663, §55 (AMD) .]

**4. Certificates of investment.** Sell certificates of investment, either of fixed or of uncertain term; and

[ 1979, c. 663, §55 (AMD) .]

**5. Branches.** Establish branch or agency offices in accordance with chapter 33; provided that the powers set forth in subsection 4 may only be exercised at branch or agency offices authorized and doing business on or before June 1, 1967.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §55 (AMD).

## §914. INSURANCE OF CERTIFICATES OF INVESTMENT

Every industrial bank shall comply with the requirements of section 422, relating to insurance of deposits, and shall be deemed a "financial institution" for purposes of that section. [1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §915. MERGERS, CONSOLIDATIONS AND ACQUISITIONS

**1. Mergers and consolidations.** An industrial bank may merge or consolidate with another industrial bank or a financial institution organized under the laws of this State except that any such merger or consolidation must be executed pursuant to the provisions of section 352 or 354 and is subject to the provisions of sections 357 and 358.

[ 1997, c. 398, Pt. L, §14 (AMD) .]

**2. Acquisitions.** An industrial bank may sell all or substantially all of its assets and liabilities to a financial institution organized under the laws of this State, or purchase all or substantially all of the assets and assume the liabilities of, another industrial bank; provided that such purchase or sale shall be executed pursuant to the provisions of section 355 and shall be subject to the provisions of sections 357 and 358.

[ 1975, c. 500, §1 (NEW) .]

**3. Mergers into other corporations.** Nothing contained in subsection 1 or 2 may be construed as prohibiting an industrial bank from merging or consolidating with, being acquired by, or selling its assets to a corporation or entity that is not enumerated in subsection 1 or 2; as long as the merger, consolidation, acquisition or sale is executed in accordance with the provisions of Title 13-C, and timely notice of that action is given to the superintendent; and as long as upon the effective date of the action, the industrial bank forfeits its charter as an industrial bank and ceases all activities as an industrial bank, which fact must be certified by the superintendent to the Secretary of State.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §18 (COR) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 398, §14 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B18 (COR).

## §916. LIQUIDATIONS AND CONSERVATION OF ASSETS

Industrial banks shall be subject to the provisions of chapter 36 relating to voluntary and involuntary liquidations, and the provisions of said chapter relating to conservation and segregation of assets. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §917. SUPERINTENDENT'S AUTHORITY

**1. Supervision and examination.** An industrial bank authorized to conduct business in this State shall be subject to the provisions of Part 2.

[ 1975, c. 500, §1 (NEW) . ]

**2. Interest rate ceilings.** The superintendent shall have the power and authority to establish rate ceilings which shall govern the interest paid by an industrial bank on certificates of investment and other deposit accounts offered by such company. Regulations promulgated by the superintendent establishing such ceilings shall seek to maintain competitive equality among all financial institutions in this State.

[ 1975, c. 500, §1 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §918. UNLAWFUL ACTS

No industrial bank authorized to do business in this State shall: [ 1975, c. 500, §1 (NEW) . ]

**1. Loan limitations; rates of loan to capital and surplus.** Hold at any one time the direct obligation or obligations of any one person, firm or corporation for more than 4% of the amount of total capital and reserves of such industrial bank or the indirect obligation or obligations of any one person, firm or corporation for more than 15% of the amount of total capital and reserves of such industrial bank. Nothing in this section shall be construed to limit the holdings of an industrial bank in the obligations of the United States or the State of Maine, and in amounts authorized by a vote of a majority of the directors or the executive committee. For the purpose of this section, bills of exchange, including trade acceptances, shall be deemed to be the direct obligations of the acceptors thereof and the indirect obligations of the drawers thereof.

[ 1975, c. 500, §1 (NEW) . ]

**2. Deposit of funds in other financial institutions.** Deposit any of its funds with any other financial institution, unless such institution has been designated as such depository by a vote of a majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated; or

[ 1979, c. 663, §56 (AMD) . ]

**3. Borrowing limitations.** Be at any time indebted for borrowed money to an amount in excess of 100% of its total capital and reserves, except that by vote of a majority of its entire board of directors or executive committee setting forth the reasons therefor, and upon receiving the written consent of the superintendent thereto, it may borrow money to redeem its certificates of investment or prevent loss by sale of assets, and may redeem rediscount notes, or pledge bonds, notes or other securities as collateral therefor. Copies of all votes authorizing such excess borrowing shall be promptly forwarded by the secretary to the superintendent. Rediscount shall be considered as borrowed money for the purpose of this section.

[ 1975, c. 500, §1 (NEW) . ]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1979, c. 663, §56 (AMD).

**§919. USE OF NAME "INDUSTRIAL BANK"**

No person, firm or corporation shall use, hold itself out as being, or advertise with the name "industrial bank", except that industrial banks which were properly authorized and doing business on or before June 1, 1967, may use such name at and in connection with their principal office and any branches which were so authorized and doing business on or before said date, and may continue to sell certificates of investment, either fixed or uncertain, and to receive payments in installments or otherwise, with or without an allowance of interest upon such installments, if doing business in such certificates on or before said date. [1975, c. 500, §1 (NEW).]

## SECTION HISTORY

1975, c. 500, §1 (NEW).

## Part 10: OTHER FINANCIAL ENTITIES

### Chapter 101: FINANCIAL INSTITUTION HOLDING COMPANIES

#### §1011. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1977, c. 663, §57 (RPR).]

**1. Financial institution holding company.** "Financial institution holding company" means any company which has control over any financial institution or has control over any company which controls any financial institution.

[ 1975, c. 500, §1 (NEW) . ]

**2. Maine financial institution holding company.** "Maine financial institution holding company" means any company whose home state is this State and that has control over any Maine financial institution or has control over a company that controls a Maine financial institution.

[ 2007, c. 79, §12 (AMD) . ]

**3. Company.** "Company" means a corporation, partnership, business trust, association or similar organization organized under the laws of the United States, any political subdivisions of the United States or a country other than the United States.

[ 1997, c. 182, Pt. A, §4 (AMD) . ]

**4. Control.** A company controls another company, referred to in this chapter as a "subsidiary," if it owns 25% or more of the equity interest of the subsidiary or if under the federal Bank Holding Company Act of 1956, as amended, under the federal Home Owners' Loan Act, Section 1467A, as amended, or under the Federal Deposit Insurance Act, as amended, or regulations or policy statements issued thereunder, that company is presumed to control the subsidiary or a determination has been made by the superintendent that the company exercises a controlling influence over the management and policies of the subsidiary.

[ 2001, c. 211, §23 (AMD) . ]

**5. Engagement in activities of subsidiaries.** A financial institution holding company shall be deemed to own shares owned by a subsidiary, and to engage in activities engaged in by a subsidiary or by any other company of which it owns 5% or more of the voting shares.

[ 1975, c. 500, §1 (NEW) . ]

**6. Maine financial institution.** "Maine financial institution" means a financial institution defined in section 131, subsection 17.

[ 2007, c. 79, §13 (AMD) . ]

**7. Non-Maine financial institution holding company.** "Non-Maine financial institution holding company" means a financial institution holding company whose home state is not this State.

[ 1995, c. 628, §27 (AMD) . ]

**8. Principally conducted.**

[ 1995, c. 628, §28 (RP) .]

**9. Acquisition of voting shares.** "Acquisition of voting shares" includes, without limitation, the acquisition of the voting power of those shares, whether by direct or indirect purchase, by single or multiple transactions or any other means.

[ 1985, c. 642, §4 (NEW) .]

**10. Person.** "Person" means an individual or individuals acting in concert, including individuals who are citizens of one or more countries, and any colonies, dependencies or possessions of those countries, other than the United States.

[ 1997, c. 182, Pt. A, §5 (AMD) .]

**11. Home state.** "Home state," with respect to a financial institution holding company, means the state in which the total deposits of all financial institution subsidiaries of that company are the largest on the later of July 1, 1966 or the date on which the company becomes a financial institution holding company under this Title.

[ 1995, c. 628, §29 (NEW) .]

**12. Host state.** "Host state," with respect to a financial institution holding company, means a state, other than the home state of the company, in which the company controls or seeks to control a financial institution subsidiary.

[ 1995, c. 628, §29 (NEW) .]

**13. Foreign bank holding company.** "Foreign bank holding company" means any company that controls, directly or indirectly, a foreign bank.

[ 1997, c. 182, Pt. A, §6 (NEW) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§31-A (AMD). 1979, c. 663, §57 (AMD). 1983, c. 302, §1 (AMD). 1985, c. 642, §§3,4 (AMD). 1991, c. 386, §26 (AMD). 1995, c. 628, §§26-29 (AMD). 1997, c. 182, §§A4-6 (AMD). 2001, c. 211, §23 (AMD). 2007, c. 79, §§12, 13 (AMD).

**§1012. REGISTRATION**

**1. Requirements.** Any company that controls one or more Maine financial institutions shall register with the superintendent in accordance with procedures established by him.

[ 1975, c. 500, §1 (NEW) .]

**2. Time limitation.** Unless the superintendent allows an additional time, registration must be completed within 180 days after October 1, 1975, or after the company acquires control of a Maine financial institution, whichever is later.

[ 1997, c. 2, §39 (COR) .]

## SECTION HISTORY

1975, c. 500, §1 (NEW). RR 1997, c. 2, §39 (COR).



## §1013. ACQUISITION OF INTERESTS IN FINANCIAL INSTITUTIONS

**1. Superintendent's approval.** The prior approval of the superintendent is required for any of the following transactions:

A. Acquisition of control of a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution, by any person or company; [1989, c. 16, §1 (RPR).]

B. Acquisition of more than 5% of the voting shares of a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution, by a financial institution, financial institution holding company, foreign bank or foreign bank holding company; or [1997, c. 182, Pt. A, §7 (AMD).]

C. Acquisition of more than 5% of the voting shares of a financial institution, or a foreign bank by a Maine financial institution or a Maine financial institution holding company. [2007, c. 79, §14 (AMD).]

[ 2007, c. 79, §14 (AMD) .]

**1-A. Notification.** Notwithstanding subsection 1, any person or company that acquires directly or indirectly more than 5% of the voting shares of a Maine financial institution or Maine financial institution holding company shall within 5 days of the acquisition file with the superintendent a statement containing the following information and any additional information as the superintendent prescribes as necessary or appropriate in the public interest:

A. The background and identity of the person or company acquiring the voting shares; [1985, c. 642, §6 (NEW).]

B. The source and amount of the funds or other consideration used in making the purchase; and [1985, c. 642, §6 (NEW).]

C. Any plans or proposals that any acquiring person or company making the acquisition may have to liquidate the Maine financial institution or Maine financial institution holding company, to sell its assets or merge it with any company or to make any other major change in its business, corporate structure or management. [2007, c. 79, §15 (AMD).]

The superintendent shall promptly notify the Maine financial institution or Maine financial institution holding company when a notice has been filed pursuant to this section. The notice must identify the fact of the acquisition and the identity of the person or company acquiring the voting shares.

Any person or company must also file notice under this section when there is material change in ownership. The acquisition of an aggregate of more than another 5% of the voting shares is a material change.

[ 2007, c. 79, §15 (AMD) .]

### 2. Acquisition by out-of-state company.

[ 1995, c. 628, §31 (RP) .]

**3. Requirements for acquisition or establishment.** A financial institution holding company, foreign bank or foreign bank holding company may establish, acquire or maintain control of a Maine financial institution or Maine financial institution holding company with prior approval of the superintendent, subject to the following conditions.

A. The Maine financial institution or Maine financial institution holding company to be established or acquired shall enter into an agreement with the superintendent to provide reports and permit examination of its records to the extent considered necessary by the superintendent to ensure compliance with this section and other relevant provisions of this Title and any rules adopted under this Title. [2007, c. 79, §16 (AMD).]

B. A Maine financial institution or Maine financial institution holding company, control of which is to be acquired or held, must have, on the date of acquisition or establishment, and shall maintain a minimum equity capital that the superintendent determines acceptable given the market area to be served and the general plan of business of the Maine financial institution or Maine financial institution holding company. Equity capital must be maintained consistent with sound banking practices. [1995, c. 628, §32 (AMD).]

C. [2007, c. 79, §17 (RP).]

[2007, c. 79, §16 (AMD); 2007, c. 79, §17 (AMD).]

#### **4. Application; information on "net new funds" to be brought to Maine.**

[1995, c. 628, §33 (RP).]

**5. Regulations.** The superintendent may adopt rules to supplement the requirements of this section.

[2007, c. 79, §18 (AMD).]

Notwithstanding the foregoing, a Maine financial institution holding company is not required to obtain the approval of the superintendent for the acquisition of additional shares in a financial institution that the Maine financial institution holding company owned or controlled by a majority of the voting shares prior to the acquisition of additional shares. [2007, c. 79, §19 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 223, (AMD). 1979, c. 349, (AMD). 1983, c. 55, §3 (AMD). 1983, c. 302, §§2,3 (AMD). 1983, c. 597, §§2-4 (AMD). 1985, c. 642, §§5,6 (AMD). 1987, c. 90, §1 (AMD). 1989, c. 16, §1 (AMD). 1995, c. 628, §§30-33 (AMD). 1997, c. 182, §§A7-9 (AMD). 2007, c. 79, §§14-19 (AMD).

## **§1014. CLOSELY-RELATED ACTIVITIES**

**1. Permissible activities.** A Maine financial institution holding company may engage in any closely related activity or any other activity with the prior permission of the superintendent.

[1997, c. 398, Pt. K, §9 (AMD).]

**2. Termination of nonpermissible activities.** A financial institution holding company that is engaged in an activity that is not permissible for Maine financial institution holding companies to engage in may nevertheless acquire control of a Maine financial institution with the approval of the superintendent as provided in section 1013; provided that before the acquisition is consummated such financial institution holding company shall cease to engage in that activity in Maine, unless it is exempted from the prohibitions of subsection 1 by reason of subsection 3.

[1975, c. 500, §1 (NEW).]

**3. Exemptions.** The prohibitions of subsection 1 do not apply with respect to any activity in which a Maine financial institution holding company was lawfully engaged in on October 1, 1975, unless the superintendent, after notice and opportunity for a hearing, determines that termination of the activity is necessary to assure the safety and soundness of a subsidiary financial institution. Any expansion of such activity in this State would be subject to such conditions as the superintendent may require.

[ 1997, c. 2, §40 (COR) . ]

**4. Impermissible activity.** The establishment or acquisition of control of a Maine financial institution does not constitute an activity permitted by this section. A financial institution holding company which seeks to establish or acquire control of a Maine financial institution is subject to the provisions of sections 1013 and 1015.

[ 1983, c. 252, (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 252, (AMD). 1987, c. 90, §2 (AMD).  
RR 1997, c. 2, §40 (COR). 1997, c. 398, §K9 (AMD).

## §1015. APPLICATIONS

**1. Requirements.** Except as provided in subsection 5, approval of the superintendent must be obtained for the following actions:

- A. Acquisition by a person or company of control of a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution; [2007, c. 79, §20 (AMD) .]
- B. Acquisitions by a financial institution, financial institution holding company, foreign bank or foreign bank holding company of interests in a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution in excess of 5% of the voting shares of such financial institution or financial institution holding company; [1997, c. 182, Pt. A, §10 (AMD) .]
- C. Acquisition or establishment by a Maine financial institution or a Maine financial institution holding company of a financial institution, including a foreign bank, in excess of 5% of the voting shares of such institution; [2007, c. 79, §21 (AMD) .]
- D. Authority for a Maine financial institution holding company to engage in a closely related activity or any other activity or to acquire or establish a subsidiary to engage in a closely related activity or any other activity; or [2001, c. 211, §24 (AMD) .]
- E. Authority for any financial institution holding company, foreign bank or foreign bank holding company controlling a Maine financial institution to engage in a closely related activity in the State or to acquire or establish a subsidiary in the State to engage in a closely related activity. [2001, c. 211, §25 (AMD) .]

[ 2007, c. 79, §§20, 21 (AMD) . ]

**2. Criteria for approval.** Applications for approvals required in subsection 1 must be filed pursuant to procedures established by the superintendent. Action on those applications must be taken in accordance with the requirements of section 252 and is subject to the standards set forth in section 253, except that applications for approval under subsection 1, paragraph A are not subject to the standards set forth in section 253, subsection 2, paragraphs C and D. In addition, applications for approvals required in subsection 1 by foreign banks are subject to the following additional criteria:

A. The foreign bank or foreign bank holding company engages in the banking business outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, or the superintendent finds that the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and [1997, c. 182, Pt. A, §12 (NEW).]

B. Whether the foreign bank or foreign bank holding company has provided the superintendent with adequate assurances that it will make available to the superintendent such information on the operations or activities of the foreign bank, foreign bank holding company and any affiliate of the foreign bank or foreign bank holding company that the superintendent considers necessary to determine and enforce compliance with this Title and other applicable state law. [1997, c. 182, Pt. A, §12 (NEW).]

[ 2007, c. 79, §22 (AMD) .]

**3. Application fee.** An application for approval required in subsection 1 may not be considered complete by the superintendent unless accompanied by an application fee to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee according to subsection 1; the fee may not exceed \$7,500.

[ 1995, c. 628, §35 (AMD) .]

#### **4. Exceptions for permissible activities.**

[ 1997, c. 398, Pt. K, §11 (RP) .]

**5. Exceptions for closely related and other activities.** Notwithstanding subsection 1, a Maine financial institution holding company may acquire or establish a subsidiary to engage in any activity and a financial institution holding company controlling a Maine financial institution may acquire or establish a subsidiary in Maine to engage in any activity without the prior approval of the superintendent subject to the following conditions.

A. If the assets of the company being acquired are less than 15% of the financial institution holding company's total consolidated assets and the company being acquired is not a financial institution or financial institution holding company, approval or notice is not required. [1997, c. 398, Pt. K, §12 (NEW).]

B. If the assets of the company being acquired are between 15% and 50% of the financial institution holding company's total consolidated assets, the financial institution holding company must notify the superintendent at least 10 days prior to consummating the transaction. The superintendent may require that an application be filed pursuant to section 252 if the following conditions are not satisfied and, based on a preliminary analysis, the superintendent concludes that the transaction may have a material adverse effect on the financial condition of the financial institution holding company and its ability to act as a source of strength to the Maine financial institution:

(1) Before and immediately after the proposed transaction, the acquiring Maine financial institution and financial institution holding company are well capitalized, as determined by the superintendent; and

(2) At the time of the transaction, the acquiring Maine financial institution and financial institution holding company are well managed, as defined in section 446-A. [2007, c. 79, §23 (AMD) .]

C. If the assets of the company being acquired are greater than 50% of the financial institution holding company's total consolidated assets, the holding company must file an application pursuant to section 252. [1997, c. 398, Pt. K, §12 (NEW).]

D. An application or notice required under this subsection is not complete unless accompanied by a fee to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee, which may not exceed \$2,500. [1999, c. 218, §27 (NEW).]

[ 2007, c. 79, §23 (AMD) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 201, §5 (AMD). 1983, c. 302, §§4,5 (AMD). 1985, c. 642, §§7,8 (AMD). 1987, c. 90, §3 (AMD). 1989, c. 16, §§2,3 (AMD). 1995, c. 628, §§34,35 (AMD). 1997, c. 22, §§25,26 (AMD). 1997, c. 182, §§A10-12 (AMD). 1997, c. 398, §§K10-12 (AMD). 1997, c. 683, §A2 (AMD). 1999, c. 218, §27 (AMD). 2001, c. 211, §§24,25 (AMD). 2007, c. 79, §§20-23 (AMD).

### §1016. REPORTS AND EXAMINATIONS

The superintendent may require any financial institution holding company that controls a Maine financial institution to furnish such reports as the superintendent considers appropriate to the proper supervision of such companies. Unless the superintendent determines otherwise, reports prepared for Federal authorities or, in the case of a foreign bank or foreign bank holding company, reports prepared for the home country regulatory authorities and translated to English may be submitted by such holding company in satisfaction of the requirements of this section. If such information and reports are inadequate in the superintendent's judgment for that purpose, the superintendent may examine such financial institution holding company and any subsidiary doing business in Maine. Section 214 applies with respect to any such examination. [1997, c. 182, Pt. A, §13 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 182, §A13 (AMD).

### §1017. CONFORMITY WITH FEDERAL PROCEDURES

To the maximum extent consistent with the effective discharge of the superintendent's responsibilities, the forms established under this chapter for registration, applications and reports must conform with those established under either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act, or the federal International Banking Act of 1978 and regulations promulgated under the federal International Banking Act of 1978. [1997, c. 182, Pt. A, §13 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1997, c. 182, §A13 (AMD).

### §1018. EXCLUSION

The superintendent may exclude financial institution holding companies or other companies from the provisions of this chapter when control of a Maine financial institution arises out of the acquisition of shares in a fiduciary capacity, or in connection with an underwriting of securities or proxy solicitation, or in securing or collecting a debt. When control of a Maine financial institution arises in connection with securing or collecting a debt, the acquiring institution or company may be excluded from the provisions of this chapter if the acquiring institution or company divests the securities within 2 years of acquisition. The superintendent may grant requests for up to 3 one-year extensions. [1993, c. 538, §4 (AMD).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). 1993, c. 538, §4 (AMD).

## §1019. PROHIBITIONS

**1. Prohibited practices.** To the extent provided for therein, financial institution holding companies subject to the laws of this State shall be subject to chapters 24 and 46.

[ 1975, c. 500, §1 (NEW) .]

**2. Penalties.** Any person or company violating any provision of this chapter, or any regulation promulgated thereunder, is subject to a penalty of not more than \$1,000 per day for each day the violation continues, to be recovered in a civil action in the name of the State.

Any company or Maine financial institution violating section 1013, subsection 3, or any regulation promulgated under that section, is subject to a penalty of not more than \$1,000 a day for each day the violation continues. The superintendent shall report the violation forthwith, with such remarks as the superintendent determines appropriate, to the Attorney General, who may forthwith institute a civil action therefor on behalf of the State.

[ 1997, c. 182, Pt. A, §14 (AMD) .]

**3. Remedy for violation of section 1013.** A Maine financial institution or any financial institution holding company which violates section 1013 shall be subject to the provisions of chapters 23 and 24.

[ 1983, c. 302, §7 (AMD) .]

### SECTION HISTORY

1975, c. 500, §1 (NEW). 1983, c. 302, §§6,7 (AMD). 1985, c. 642, §9 (AMD). 1997, c. 182, §A14 (AMD).

## §1019-A. NOTIFICATION OF SUPERINTENDENT; PURCHASE OF OWN SHARES

A Maine financial institution holding company shall provide the superintendent with prior notification regarding the following transactions: [1991, c. 386, §27 (AMD) .]

**1. Issuance of stock, capital notes or debentures.** The issuance of equity interest, capital notes or debentures with an original maturity of 3 years or greater. Notice must be provided at least 10 days prior to issuance and must contain a copy of any United States Securities and Exchange Commission filings, private placement memoranda or other documents describing the proposed issue to potential investors;

[ 2005, c. 82, §13 (AMD) .]

**2. Purchase of own capital stock.** The purchase of shares of any type of its own equity interest. Notice must contain such information as required by the superintendent; and

[ 2005, c. 82, §13 (AMD) .]

**3. Exception requiring approval.** The issuance of equity interest or capital notes by a Maine financial institution holding company that is not required to file notice with the United States Securities and Exchange Commission. Issuance under this subsection also requires prior approval of the superintendent. A Maine financial institution holding company may not purchase or redeem its equity interests without

the superintendent's prior written approval if the gross consideration for purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10% or more of the company's consolidated net worth.

[ 2005, c. 82, §14 (NEW) .]

#### SECTION HISTORY

1987, c. 90, §4 (NEW). 1991, c. 386, §27 (AMD). 2005, c. 82, §§13,14 (AMD).

### **§1020. ANNUAL REPORTS TO THE LEGISLATURE (REPEALED)**

#### SECTION HISTORY

1983, c. 597, §5 (NEW). 1983, c. 816, §B3 (RP).

## **Chapter 102: MUTUAL TRUST INVESTMENT COMPANIES**

### **§1021. DEFINITION**

As used in this chapter, the term "mutual trust investment company" means a corporation which is an investment company as defined by an Act of Congress entitled "Investment Company Act of 1940", as amended; and incorporated in compliance with this chapter to constitute a medium for the common investment of trust funds held in a fiduciary capacity, and for true fiduciary purposes, either alone or with one or more cofiduciaries, by State banks with trust powers, trust companies and national banks with trust powers which are located in this State. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

### **§1022. AUTHORITY TO INCORPORATE**

Any 5 or more state banks with trust powers, trust companies and national banks with trust powers located in this State are authorized to cause a mutual trust investment company to be organized and incorporated, subject to the approval of the superintendent and subject to such regulations as he may prescribe. [1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

### **§1023. APPLICATION OF GENERAL CORPORATION LAW; ARTICLES OF INCORPORATION**

**1. Subject to Title 13-C.** Except as otherwise provided in this chapter, such a mutual trust investment company must be incorporated under and is subject to Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §19 (COR) .]

**2. Incorporators.** The incorporators subscribing to and acknowledging the articles of incorporation shall consist of 5 or more persons who are officers or directors of the banks and trust companies causing such mutual trust investment company to be incorporated.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B19 (COR).

## §1024. CORPORATE POWERS; STOCK OWNERSHIP

**1. Ownership.** The stock of a mutual trust investment company shall be owned only by State banks with trust powers, trust companies and national banks with trust powers located in this State, acting as fiduciaries, and their individual cofiduciaries, if any, but may be registered in the name of their nominee or nominees.

[ 1975, c. 500, §1 (NEW) .]

**2. Transfer or assignment.** The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or cofiduciary which becomes successor to the stockholder or its nominee; provided that such successor fiduciary or cofiduciary or its nominee is qualified to hold such stock under subsection 1.

[ 1975, c. 500, §1 (NEW) .]

**3. Directors.** A mutual trust investment company shall have not less than 5 directors who need not be stockholders but shall be officers or directors of banks or trust companies located in this State.

[ 1975, c. 500, §1 (NEW) .]

**4. Investments; assets.** A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this State, and its assets shall constitute personal property held in trust. Such company shall make no investment in:

A. The note of an individual or individuals, whether or not it is secured; [1975, c. 500, §1 (NEW) .]

B. The note, bond or other obligation of any firm, corporation or other issuer if the total original issue of such notes, bonds or other obligations is less than \$500,000; [1975, c. 500, §1 (NEW) .]

C. Any stocks, bonds or other obligations issued or guaranteed by any one firm, corporation or other issuer in excess of 10% of the total assets of the mutual trust investment company, as increased by the proposed investment; provided that this limitation shall not apply to obligations of the United States, or for the payment of the principal and interest of which the full faith and credit of the United States is pledged; and [1975, c. 500, §1 (NEW) .]

D. Shares of stock of any one corporation which would cause the total number of such shares held by the mutual trust investment company to exceed 10% of the number of such shares outstanding. [1975, c. 500, §1 (NEW) .]

[ 1975, c. 500, §1 (NEW) .]

**5. Stock acquisition.** A mutual trust investment company may acquire, purchase or redeem its own stock and shall by means of contract or of its bylaws bind itself to acquire, purchase or redeem its own stock, but it shall not vote upon shares of its own stock.

[ 1975, c. 500, §1 (NEW) .]



**6. Responsibility, liability, accountability.** A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock, and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture or other instrument under which such fiduciary is acting in the absence of actual knowledge of such violation, and shall be accountable only to the superintendent and the fiduciaries who are the owners of its stock.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §1025. PURCHASE OF STOCK BY FIDUCIARIES; AUTHORITY AND RESTRICTIONS

**1. Investment in shares of stock.** State banks with trust powers, trust companies and national banks with trust powers located in this State, acting in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more individual cofiduciaries, may, if exercising the care of a prudent investor and with the consent of such individual cofiduciary or cofiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except where the will, trust indenture or other instrument under which such fiduciary is acting prohibits such investment. No investment in the stock of a mutual trust investment company may be made by any bank or trust company which operates its own common trust fund under the laws of this State. The stock shall not be subject to Title 32, chapter 13.

[ 1975, c. 500, §1 (NEW) . ]

**2. Limitation.** No funds of any estate, trust or fund shall be invested in the stock of a mutual trust investment company in an amount which would result in any bank or trust company having an aggregate holding in excess of 25% of the total issued and outstanding stock of such mutual trust investment company, as increased by the amount of the proposed investment. In the event that by reason of reduction of the holdings of stock by other banks or trust companies, mergers of banks or trust companies, or for other reasons, the aggregate holding of stock in the mutual trust investment company by any bank or trust company shall become greater than 25% of the total issued and outstanding stock, such bank or trust company may retain the stock then held by it but may not make further investments in such stock until its aggregate holdings have become less than such 25%.

[ 1975, c. 500, §1 (NEW) . ]

**3. Responsibility.** A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirements, except that the mutual trust investment company shall be responsible to see that the limit on the holding of stock by any one bank or trust company as provided in subsection 2 is not exceeded.

[ 1975, c. 500, §1 (NEW) . ]

#### SECTION HISTORY

1975, c. 500, §1 (NEW).

## §1026. POWERS OF THE SUPERINTENDENT

**1. Rules and regulations.** The superintendent shall have authority to adopt and issue regulations to govern the conduct and management of all mutual trust investment companies formed pursuant to this chapter, and to prescribe, among other things:

A. The records and accounts to be kept by the mutual trust investment company; [1975, c. 500, §1 (NEW).]

B. The methods and standards to be employed in establishing the value of the shares of stock in the mutual trust investment company and of its assets; and [1975, c. 500, §1 (NEW).]

C. The procedure to be followed in the sale and redemption of its stock. [1975, c. 500, §1 (NEW).]

[ 1975, c. 500, §1 (NEW) .]

**2. Examination.** The superintendent shall at least once in each calendar year, and whenever the superintendent deems it necessary or expedient, examine every such mutual trust investment company. On every such examination of a mutual trust investment company, the superintendent shall make inquiry as to its financial condition, the policies of its management, whether it is complying with the laws of this State and such other matters as the superintendent may prescribe. The reasonable expenses of each examination of a mutual trust investment company pursuant to this section must be charged to the company in accordance with the provision of section 214.

[ 2009, c. 2, §9 (COR) .]

**3. Power and authority.** In the enforcement of this chapter and the fulfillment of his responsibilities hereunder, the superintendent shall have the same power and authority over and with respect to mutual trust investment companies and their directors, officers and employees, including the power to compel the attendance of witnesses and the production of books, records, documents and testimony, the power to require the submission to him of reports and information in such form and at such times as he may prescribe, the power to direct the discontinuation of any practice which he may consider illegal, unauthorized or unsafe; and all other powers and authorities, whether or not specifically mentioned herein, as are given the superintendent by the laws of this State with respect to financial institutions in the same manner and with like effect as if mutual trust investment companies were expressly named therein.

[ 1975, c. 500, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 500, §1 (NEW). RR 2009, c. 2, §9 (COR).

## Chapter 105: MUTUAL HOLDING COMPANY

### §1051. PURPOSE

This chapter authorizes mutual financial institutions to reorganize into mutual holding companies.

[1985, c. 558, (NEW).]

#### SECTION HISTORY

1985, c. 558, (NEW).

### §1052. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 558, (NEW).]

**1. Mutual financial institution.** "Mutual financial institution" means any institution as defined in section 131, subsection 27.

[ 1985, c. 558, (NEW) .]

**2. Mutual holding company.** "Mutual holding company" means any corporation organized pursuant to this chapter.

[ 1985, c. 558, (NEW) . ]

**3. Subsidiary universal bank.** "Subsidiary universal bank" means any universal bank organized under the laws of this State, at least 51% of the voting stock of which is wholly owned by a mutual holding company.

[ 2009, c. 228, §10 (AMD) . ]

#### SECTION HISTORY

1985, c. 558, (NEW). 1993, c. 257, §4 (AMD). 2009, c. 228, §10 (AMD).

### §1053. FORMATION OF MUTUAL HOLDING COMPANY

**1. Reorganization.** Notwithstanding any other provision of law, a mutual financial institution may reorganize so as to become a mutual holding company by:

A. Chartering, pursuant to chapter 31, a subsidiary universal bank; and [ 2009, c. 228, §11 (AMD) . ]

B. Transferring a substantial part of its assets and liabilities, including all of its insured liabilities to the subsidiary universal bank. The subsidiary universal bank must meet or exceed minimum capital requirements prescribed by federal law or regulations or state law or rules. Persons having liquidation rights with respect to the mutual financial institution pursuant to chapter 36, at the time of the formation of the subsidiary universal bank, have those rights with respect to the mutual holding company.  
[ 2009, c. 228, §11 (AMD) . ]

[ 2009, c. 228, §11 (AMD) . ]

**2. Plan.** A plan of reorganization authorized under this chapter must be approved by a majority of the board of directors and members of the mutual financial institution.

[ 2007, c. 79, §24 (AMD) . ]

**3. Approval.** Mutual financial institutions seeking to establish a mutual holding company pursuant to this chapter or a mutual holding company seeking to convert to a stock financial institution holding company shall do so pursuant to section 344, except that the conversion plan of a mutual holding company to a stock financial institution holding company is subject to the approval of a 2/3 vote of all the eligible account holders of all the financial institutions that are subsidiaries of the holding company. If there is more than one subsidiary financial institution, the eligible account holders are combined and 2/3 of the combined eligible account holders must approve the conversion. Only account holders of financial institutions that are subsidiaries of the holding company are eligible to vote on the conversion plan. Shareholders of nonbank stock subsidiaries are not eligible to vote on the conversion plan.

[ 1993, c. 257, §5 (AMD) . ]

**4. Issuance of stock and securities.** A subsidiary universal bank has the power to issue to persons other than the mutual holding company of which it is a subsidiary an amount of common stock and securities convertible into common stock that in the aggregate does not exceed 49% of the issued and outstanding common stock of that subsidiary universal bank. For purposes of the 49% limitation, any issued and outstanding securities that are convertible into common stock, including warrants, options and rights to purchase common stock, are considered issued and outstanding common stock of the subsidiary. Each time common stock of the subsidiary universal bank is offered by the institution to the general public for a price

payable in cash, each eligible account holder of the subsidiary universal bank of the mutual holding company must receive, without payment, nontransferable subscription rights to purchase that common stock at the same price and in accordance with guidelines or rules as may be adopted by the superintendent. For purposes of this chapter, "offer to the general public" means an offer by means of public advertising or general solicitation and does not include:

- A. Issuances to the mutual holding company; or [1993, c. 257, §6 (NEW).]
- B. Offers or sales that are exempt from registration by virtue of Title 32, section 16202, subsection 16, 19 or 26. [2009, c. 228, §12 (AMD).]

[ 2009, c. 228, §12 (AMD) .]

**5. Reporting.** A subsidiary universal bank that issues, or has issued and outstanding, any common stock or securities convertible into common stock to persons other than the mutual holding company of which it is a subsidiary shall file consolidated financial statements, reports or proxy materials as required under federal law. If the consolidated financial statements, reports or proxy materials are not required to be filed with any federal authority or agency, copies of the consolidated financial statements, reports or proxy materials must be filed with the superintendent and must be public records.

[ 2009, c. 228, §13 (AMD) .]

**6. Powers of subsidiary universal banks.** A subsidiary universal bank may continue to exercise its powers, rights and privileges and is subject to limitations not inconsistent with this chapter and applicable to a savings bank or savings and loan association organized under the laws of the State, including, but not limited to, the powers of a stock financial institution organized under chapter 31.

[ 2009, c. 228, §14 (AMD) .]

#### SECTION HISTORY

1985, c. 558, (NEW). 1993, c. 257, §§5,6 (AMD). 2005, c. 65, §C5 (AMD). 2007, c. 79, §24 (AMD). 2009, c. 228, §§11-14 (AMD).

## §1054. CORPORATE EXISTENCE AND POWERS

**1. Legal existence.** Upon the reorganization of a mutual financial institution pursuant to this chapter, the legal existence of the mutual financial institution shall not terminate, but shall continue, not as a deposit-taking institution, but as a mutual holding company.

[ 1985, c. 558, (NEW) .]

**2. Governance.** A mutual holding company must be governed by a board of corporators in accordance with the charter and bylaws of the mutual holding company, as adopted or amended, in connection with a reorganization authorized under this chapter or as amended by the corporators thereafter. The corporators shall elect a board of directors provided that the superintendent has the authority to comment upon the composition of the board. The corporators and the board of directors are governed by and authorized to undertake the activities as set forth in sections 325 and 326. With respect to a mutual holding company that has been formed through the reorganization of a savings bank, the board of corporators initially consists of the board of corporators of the savings bank as constituted pursuant to section 325. The corporators, after the formation of the mutual holding company, continue to serve as corporators for the balance of the terms to which they are elected under section 325.

[ 2013, c. 2, §10 (COR) .]

**3. Powers.** A mutual holding company may:

- A. Invest in the stock of a financial institution, subject to section 1013; [1985, c. 558, (NEW).]
- B. Acquire a mutual financial institution through merger into a subsidiary universal bank or an interim subsidiary universal bank of the mutual holding company; [2009, c. 228, §15 (AMD).]
- C. Merge with or acquire a mutual holding company, one of whose subsidiaries is a savings bank or savings and loan association; [1985, c. 558, (NEW).]
- D. Exercise any power, right or privilege, with the exception of deposit taking, granted to mutual financial institutions under the laws of the State, and, unless specifically noted otherwise, any reference to "savings bank" or "savings and loan association" in any other law of this State also applies to a subsidiary universal bank chartered pursuant to this chapter; [2009, c. 228, §15 (AMD).]
- E. Invest in the capital stock of a company, which is a legal investment for a savings bank under the laws of the State; [1985, c. 558, (NEW).]
- F. Exercise any power or engage in any activity authorized for a bank holding company or savings and loan holding company under federal law or rule or chapter 101; and [1985, c. 558, (NEW).]
- G. Exercise any other power or engage in any other activity authorized by the superintendent. [1985, c. 558, (NEW).]

[ 2009, c. 228, §15 (AMD) .]

#### SECTION HISTORY

1985, c. 558, (NEW). 1993, c. 257, §§7,8 (AMD). 2009, c. 228, §15 (AMD). RR 2013, c. 2, §10 (COR).

### §1055. RULES

The superintendent shall adopt such rules as necessary to effectuate the purposes of this chapter and to ensure that the reorganization of a mutual financial institution is conducted in a fair and equitable manner to ensure the safety and soundness of the subsidiary universal bank and the protection of the subsidiary universal bank's net worth. [2009, c. 228, §16 (AMD).]

#### SECTION HISTORY

1985, c. 558, (NEW). 1993, c. 257, §9 (AMD). 2009, c. 228, §16 (AMD).

### §1056. REPORTS AND EXAMINATIONS

All mutual financial institution holding companies shall be subject to section 1016. [1985, c. 558, (NEW).]

#### SECTION HISTORY

1985, c. 558, (NEW).

## Chapter 107: MERCHANT BANKING

### §1101. ORGANIZATION AND STRUCTURE OF MERCHANT BANKS

*(REPEALED)*

#### SECTION HISTORY

1997, c. 66, §6 (NEW). 1997, c. 398, §J1 (RP).

### §1102. BUSINESS OF MERCHANT BANKS; POWERS; LIMITATIONS

*(REPEALED)*

## SECTION HISTORY

1997, c. 66, §6 (NEW). 1997, c. 398, §J1 (RP).

## Part 12: SPECIALTY OR LIMITED PURPOSE FINANCIAL INSTITUTIONS

### Chapter 121: NONDEPOSITORY TRUST COMPANIES

#### §1211. GENERAL PURPOSE AND AUTHORITY

A nondepository trust company is a financial institution organized under the provisions of this Title whose activities are generally limited to trust or fiduciary matters. Unless otherwise indicated in this chapter or to the extent inconsistent with this chapter or with the general purpose of a nondepository trust company, a nondepository trust company has all the powers, duties and obligations of a financial institution under this Title. [1997, c. 398, Pt. J, §2 (NEW).]

##### SECTION HISTORY

1997, c. 398, §J2 (NEW).

#### §1212. ORGANIZATION OF NONDEPOSITORY TRUST COMPANIES

**1. Organization.** A nondepository trust company must be organized pursuant to chapter 31.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**2. Organizational documents.** The organizational documents of a nondepository trust company that are filed with the Secretary of State must contain the following statement: "This corporation, limited liability company, limited partnership or limited liability partnership is subject to the Maine Revised Statutes, Title 9-B, chapter 121 and does not have the power to solicit, receive or accept money or its equivalent on deposit or to lend money except for lending reasonably related to and deriving from its service as fiduciary or its conduct of trust business." This statement in the organizational documents of a nondepository trust company may not be amended.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Conversion.** A nondepository trust company may convert to any other type of investor-owned financial institution pursuant to chapter 34.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

##### SECTION HISTORY

1997, c. 398, §J2 (NEW).

#### §1213. CAPITAL

A nondepository trust company must have initial paid-in capital in accordance with chapter 31 and shall maintain capital in accordance with section 412-A and any rules adopted under section 412-A, except the superintendent may establish different capital maintenance requirements for nondepository trust companies than those required for other financial institutions organized under this Title. [1999, c. 539, §1 (AMD).]

##### SECTION HISTORY

1997, c. 398, §J2 (NEW). 1999, c. 539, §1 (AMD).

## §1213-A. ASSET PLEDGE

**1. Pledge requirement.** The superintendent may require a nondepository trust company to pledge readily marketable assets to the superintendent if the superintendent believes that circumstances warrant the action. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the nondepository trust company has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the nondepository trust company so warrants that action.

[ 2005, c. 83, §12 (NEW) .]

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of \$1,000,000 or 50% of the minimum required capital of the nondepository trust company at the time the asset pledge is imposed.

[ 2005, c. 83, §12 (NEW) .]

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the nondepository trust company continues business in the ordinary course, the nondepository trust company may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

[ 2005, c. 83, §12 (NEW) .]

**4. Noncompliance.** If a nondepository trust company fails to maintain the minimum required asset pledge, the superintendent may determine that the nondepository trust company does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

[ 2005, c. 83, §12 (NEW) .]

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 83, §12 (NEW) .]

### SECTION HISTORY

2005, c. 83, §12 (NEW).

## §1214. BUSINESS OF NONDEPOSITORY TRUST COMPANIES

**1. General powers.** A nondepository trust company has all of the powers of and is entitled to engage in the business of a financial institution, including, without limitation, powers with respect to fiduciary and trust functions and transactions except that a nondepository trust company does not have the power to solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5 and does not have the power to lend money except in transactions reasonably related to and deriving from its service as fiduciary or its conduct of trust business.

[ 1997, c. 398, Pt. J, §2 (NEW) .]



**2. Closely related activities.** A nondepository trust company may conduct closely related activities, as defined in section 131, subsection 6-A and provided for in chapter 44, except that the superintendent may exclude those activities closely related to lending and taking deposits.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Cash deposits.** A nondepository trust company may deposit cash, whether constituting principal or income, in any financial institution whether within or without this State, including any affiliated financial institution, if the account is held either in the name of the trust to which the cash belongs or in the name of the nondepository trust company and is composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the nondepository trust company.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**4. Name.** A nondepository trust company may not use as a part of the name or title under which its business is conducted or in designating its business the word or words "bank," "banker" or "banking" or the plural of or any abbreviation of those words. A nondepository trust company shall include as a part of its name the word "trust" unless otherwise approved by the superintendent for good cause shown.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**5. Additional offices.** Notwithstanding chapters 33 and 37, a nondepository trust company may establish additional offices without the superintendent's approval.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## §1215. HOLDING COMPANIES OF NONDEPOSITORY TRUST COMPANIES

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than nondepository trust companies or merchant banks, a holding company of a nondepository trust company is not subject to the provisions of chapter 101, except for section 1013, subsection 1 and the application requirements of section 1015 relevant to section 1013, subsection 1. [1997, c. 398, Pt. J, §2 (NEW).]

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than nondepository trust companies, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the nondepository trust company. [2005, c. 82, §15 (AMD).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW). 2005, c. 82, §15 (AMD).

## §1216. RULES

The superintendent may prescribe rules governing the activities of nondepository trust companies and implementing this chapter. These rules must take into account the general business purpose and nondepository nature of nondepository trust companies. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## Chapter 122: MERCHANT BANKS

### §1221. GENERAL PURPOSE AND AUTHORITY

A merchant bank is a financial institution organized under the provisions of this Title whose activities are generally limited to lending and investing as well as trust or fiduciary matters. Deposit activity is prohibited. Unless otherwise indicated in this chapter, a merchant bank has all the powers, duties and obligations of a financial institution under this Title. As one of the purposes of merchant banks is to provide needed capital or investments to businesses that may be impermissible or imprudent for depository financial institutions, its lending and investment activities are less restricted. [1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW) .

### §1222. ORGANIZATION OF MERCHANT BANKS

**1. Organization.** A merchant bank must be organized pursuant to chapter 31 and must be managed and governed pursuant to this Title and the applicable provisions of Title 13-C and Title 31, chapters 15, 19 and 21, depending upon the organizational form selected.

[ 2009, c. 629, Pt. A, §3 (AFF); 2009, c. 629, Pt. B, §5 (AMD) .]

**2. Organizational documents.** The organizational documents of a merchant bank that are filed with the Secretary of State must contain the following statement: "This corporation, limited liability company, limited partnership or limited liability partnership is subject to the Maine Revised Statutes, Title 9-B, chapter 122 and does not have the power to solicit, receive or accept money or its equivalent on deposit." This statement in the organizational documents of a merchant bank may not be amended.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Conversion.** A merchant bank may convert to any other type of investor-owned financial institution pursuant to chapter 34.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B20 (COR). 2005, c. 543, §D5 (AMD). 2005, c. 543, §D18 (AFF). 2009, c. 629, Pt. A, §3 (AFF). 2009, c. 629, Pt. B, §5 (AMD).

### §1223. CAPITAL

#### 1. Initial capital.

[ 1999, c. 539, §2 (RP) .]

**2. Capital.** A merchant bank must have initial paid-in capital in accordance with chapter 31 and shall maintain minimum capital in accordance with section 412-A or any rules adopted under section 412-A. The superintendent may establish different capital maintenance standards for merchant banks than for other financial institutions organized under this Title. The minimum capital maintenance standards for a merchant

bank may not be less than a level equal to 150% of the tier 1 risk-based capital and 150% of total risk-based capital established from time to time by the Board of Governors of the Federal Reserve System for a well-capitalized bank.

[ 1999, c. 539, §3 (AMD) . ]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW). 1999, c. 539, §§2,3 (AMD).

### §1223-A. ASSET PLEDGE

**1. Pledge requirement.** The superintendent may require a merchant bank to pledge readily marketable assets to the superintendent if the superintendent believes that the action is necessary for the protection of the public. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the merchant bank has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the merchant bank so warrants that action.

[ 2005, c. 83, §13 (NEW) . ]

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of \$1,000,000 or 50% of the minimum required capital of the merchant bank at the time the asset pledge is imposed.

[ 2005, c. 83, §13 (NEW) . ]

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the merchant bank continues business in the ordinary course, the merchant bank may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

[ 2005, c. 83, §13 (NEW) . ]

**4. Noncompliance.** If a merchant bank fails to maintain the minimum required asset pledge, the superintendent may determine that the merchant bank does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

[ 2005, c. 83, §13 (NEW) . ]

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 83, §13 (NEW) . ]

#### SECTION HISTORY

2005, c. 83, §13 (NEW).

## §1224. BUSINESS OF MERCHANT BANKS; POWER; LIMITATIONS

**1. Business of merchant banks.** Except as provided in this chapter, a merchant bank has all the powers of and is entitled to engage in the business of a financial institution, including, without limitation, powers with respect to investments, loans, fiduciary and trust functions and transactions.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**2. Deposit activities.** A merchant bank may not solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5 or engage in deposit-like activities as determined by the superintendent. A merchant bank may deposit cash, whether constituting principal or income, in any financial institution, whether within or without this State, if the account is held either in the name of the trust to which the cash belongs or in the name of the merchant bank and is composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the merchant bank.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Treasurer's checks.** A merchant bank may issue drafts drawn on itself in the form of treasurer's or cashier's checks.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**4. Name.** Notwithstanding section 241, subsection 9, a merchant bank may use as a part of its name the word or words "bank," "banker" or "banking" or the plural of or any abbreviations of those words.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**5. Offices.** At least 30 days prior to the establishment of any office or branch office for the transaction of its business, a merchant bank shall notify the superintendent.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**6. Provisions inapplicable.** The following provisions of this Title are inapplicable to merchant banks: sections 223, 316-A, 439-A, 445, 446-A and 465-A and chapters 33, 37 and 42. The limitations on the holding of equity securities and the purchase of speculative securities, equities and venture capital investments contained in section 419, subsection 1 are also inapplicable to merchant banks.

[ 1997, c. 660, Pt. A, §8 (AMD) .]

### SECTION HISTORY

1997, c. 398, §J2 (NEW). 1997, c. 660, §A8 (AMD).

## §1225. INSIDER LOANS AND INVESTMENTS

The terms of any loans by a merchant bank to or investments by a merchant bank in any of the following must be disclosed to the governing body of the merchant bank: [1997, c. 398, Pt. J, §2 (NEW) .]

**1. Percentage of common stock.** A person who owns 25% or more of the merchant bank's common stock or similar equity capital;

[ 1997, c. 683, Pt. A, §3 (AMD) .]

**2. Member of governing body.** A member of the governing body of the merchant bank;

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Policy-making officer or manager.** A policy-making officer or manager of the merchant bank; or

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**4. Percentage of voting shares owned by certain person or entity.** A company 25% of the voting shares or other similar voting equity of which is owned by a person or entity listed in subsections 1 to 3.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW). 1997, c. 683, §A3 (AMD).

## §1226. HOLDING COMPANIES OF MERCHANT BANKS

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank or a nondepository trust company, a holding company of a merchant bank is not subject to the provisions of chapter 101, except for section 1013, subsection 1 and the application requirements of section 1015 relevant to section 1013, subsection 1. [1997, c. 398, Pt. J, §2 (NEW).]

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the merchant bank. [2005, c. 82, §16 (AMD).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW). 2005, c. 82, §16 (AMD).

## §1227. RULES

The superintendent may prescribe rules governing the activities of merchant banks and implementing this chapter. These rules must take into account the objective of merchant banks to provide needed capital to businesses and the nondepository nature of merchant banks. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## Chapter 123: UNINSURED BANKS

## §1231. GENERAL AUTHORITY AND PURPOSE

A financial institution that does not accept retail deposits and for which insurance of deposits by the FDIC is not required may be organized pursuant to chapter 31. Unless otherwise indicated in this chapter, an uninsured bank has all the powers, rights, duties and obligations as a financial institution under this Title. An uninsured bank is not a nondepository trust company or a merchant bank. [1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## §1232. ORGANIZATION OF UNINSURED BANKS

**1. Organization.** An uninsured bank must be organized pursuant to chapter 31.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**2. Organizational documents.** The organizational documents of an uninsured bank that are filed with the Secretary of State must contain the following statement: "This corporation, limited liability company, limited partnership or limited liability partnership is subject to the Maine Revised Statutes, Title 9-B, chapter 123 and does not have the power to solicit, receive or accept retail deposits." This statement in the organizational documents of an uninsured bank may not be amended.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Conversion.** An uninsured bank may convert to any other type of investor-owned financial institution pursuant to chapter 34.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## §1233. CAPITAL

An uninsured bank must have initial paid-in capital in accordance with chapter 31 and shall maintain minimum capital in accordance with section 412-A or rules adopted under section 412-A, except that the superintendent may establish different capital maintenance requirements for uninsured banks than those required for insured financial institutions organized under this Title. [1999, c. 539, §4 (AMD).]

### SECTION HISTORY

1997, c. 398, §J2 (NEW). 1999, c. 539, §4 (AMD).

## §1233-A. ASSET PLEDGE

**1. Pledge requirement.** The superintendent may require an uninsured bank to pledge readily marketable assets to the superintendent if the superintendent believes that the action is necessary for the protection of the public. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the uninsured bank has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the uninsured bank so warrants that action.

[ 2005, c. 83, §14 (NEW) .]

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of \$1,000,000 or 50% of the minimum required capital of the uninsured bank at the time the asset pledge is imposed.

[ 2005, c. 83, §14 (NEW) .]

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the uninsured bank continues business in the ordinary course, the uninsured bank may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

[ 2005, c. 83, §14 (NEW) .]

**4. Noncompliance.** If an uninsured bank fails to maintain the minimum required asset pledge, the superintendent may determine that the uninsured bank does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

[ 2005, c. 83, §14 (NEW) .]

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 83, §14 (NEW) .]

#### SECTION HISTORY

2005, c. 83, §14 (NEW).

### §1234. CASH RESERVES ON DEPOSITS AND ACCOUNTS

An uninsured bank shall maintain reserves in accordance with section 422-A. The superintendent may establish by rule or order additional reserve requirements for uninsured banks. [1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

### §1235. LENDING LIMITS

An uninsured bank's lending limit is governed by section 439-A or rules adopted under section 439-A, except that loans or extensions of credit to a person are limited to 15% of total capital. [1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

### §1236. DEPOSITS

An uninsured bank may not engage in retail deposit activities. The superintendent shall define deposit activities that do not constitute retail deposit activities by rule, taking account of the size or nature of depositors and deposit accounts. [1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

### §1237. DISCLOSURE OF UNINSURED STATUS

**1. Sign that deposits not insured.** An uninsured bank shall display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**2. Statement that deposits not insured.** An uninsured bank shall either include in boldface conspicuous type on each signature card, passbook and instrument evidencing a deposit the following statement: "This deposit is not insured by the FDIC" or require each depositor to execute a statement that acknowledges that the initial deposit and all future deposits at the bank are not insured by the FDIC. The bank shall retain this acknowledgment as long as the depositor maintains any deposit with the bank.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

**3. Statement on deposit-related advertising that deposits not insured.** An uninsured bank shall include on all its deposit-related advertising a statement that deposits are not insured by the FDIC.

[ 1997, c. 398, Pt. J, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## §1238. RULES

The superintendent may prescribe rules governing the activities of uninsured banks and implementing this chapter. These rules must take into account the uninsured status of these banks. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

1997, c. 398, §J2 (NEW).

## §1239. HOLDING COMPANIES OF UNINSURED BANKS

If a holding company is not a financial institution holding company under chapter 101 by virtue of controlling a financial institution other than a merchant bank, a nondepository trust company or an uninsured bank, the superintendent may grant the holding company a waiver from the provisions of chapter 101; except that, the superintendent may not waive the requirements of section 1013, subsection 1 and the application requirements of section 1015 relevant to section 1013, subsection 1. [2001, c. 211, §26 (NEW).]

If a holding company is not a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank, nondepository trust company or uninsured bank, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the uninsured bank. [2001, c. 211, §26 (NEW).]

#### SECTION HISTORY

2001, c. 211, §26 (NEW).



## Part 13: FOREIGN BANKS

### Chapter 131: FOREIGN BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

#### §1311. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 182, Pt. B, §3 (NEW).]

**1. Agency.** "Agency" means any office or any place of business of a foreign bank located in any state of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent, but at which deposits may not be accepted from persons who are citizens or residents of the United States.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Branch.** "Branch" means any office or any place of business of a foreign bank located in any state of the United States at which deposits are received.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**3. Federal agency.** "Federal agency" means an agency of a foreign bank established and operating pursuant to Section 4 of the federal International Banking Act of 1978.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**4. Federal branch.** "Federal branch" means a branch of a foreign bank established and operating pursuant to Section 4 of the federal International Banking Act of 1978.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**5. Maine agency.** "Maine agency" means an agency of a foreign bank located in this State and established and operating pursuant to the provisions of this chapter.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**6. Maine branch.** "Maine branch" means a branch of a foreign bank located in this State and established and operating pursuant to the provisions of this chapter.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**7. Maine foreign bank.** "Maine foreign bank" means a foreign bank that operates a Maine branch or Maine agency and for which Maine is the home state, in accordance with Section 5 of the federal International Banking Act of 1978.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**8. Maine representative office.** "Maine representative office" means a representative office located in this State and established and operating pursuant to the provisions of this chapter.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**9. Out-of-state foreign bank.** "Out-of-state foreign bank" means a foreign bank for which a state other than Maine is the home state, in accordance with Section 5 of the federal International Banking Act of 1978.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**10. Representative office.** "Representative office" means any office of a foreign bank that is located in any state and is not a federal branch, federal agency, state branch, state agency or subsidiary of a foreign bank.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1312. BRANCHES AND AGENCIES OF FOREIGN BANKS

**1. Establishment.** A foreign bank that is or will become a Maine foreign bank and engages directly in the banking business outside the United States may, with the prior approval of the superintendent, establish a branch or agency. The establishment of a branch or agency may be de novo or through merger or acquisition.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Criteria for approval.** Applications for approvals required in subsection 1 must be filed pursuant to procedures established by the superintendent. Action on those applications must be taken in accordance with the requirements of section 252 and is subject to the standards set forth in section 253. Those applications are subject to the following additional criteria:

A. The foreign bank must directly engage in the banking business outside of the United States and be subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, or the superintendent finds that the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of the bank; and [1997, c. 182, Pt. B, §3 (NEW).]

B. The foreign bank has provided the superintendent with adequate assurances that it will make available to the superintendent any information on the operations or activities of the foreign bank and any of its affiliates that the superintendent considers necessary to determine and enforce compliance with this Title and other applicable state law. [1997, c. 182, Pt. B, §3 (NEW).]

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**3. Application fee.** An application for approval required in subsection 1 may not be considered complete by the superintendent unless accompanied by an application fee to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee, which may not exceed \$7,500.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1313. FEDERAL BRANCHES AND AGENCIES

**1. Permissibility of federal branches and agencies.** Nothing in this Title may be construed to prohibit the operation of a federal branch or a federal agency in this State.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. No concurrent maintenance of federal branches or agencies.** No foreign bank authorized to operate a Maine branch or Maine agency pursuant to section 1312 may maintain concurrently a federal branch or federal agency in this State.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1314. POWERS OF MAINE BRANCHES AND AGENCIES

**1. General powers.** Except as otherwise specifically provided in this chapter or in orders or rules adopted by the superintendent, and notwithstanding any other law or rule of this State to the contrary, operations of a foreign bank at a Maine branch or Maine agency must be conducted with the same rights, privileges and powers accorded a trust company at the same location and are subject to all the same duties, restrictions, penalties, liabilities, conditions and limitations that apply under the laws of this State to a trust company doing business at the same location.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Exceptions.** The following are exceptions to the provisions of subsection 1.

A. A Maine branch may not accept from citizens or residents of the United States deposits, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, of less than \$100,000, except to the extent that those deposits are determined by the Federal Deposit Insurance Corporation not to constitute "domestic retail deposit activities requiring deposit insurance protection" within the meaning of Section 6 of the federal International Banking Act of 1978. [1997, c. 182, Pt. B, §3 (NEW).]

B. A Maine agency may not accept any deposits from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, but it may accept deposits from persons who are neither citizens nor residents of the United States. [1997, c. 182, Pt. B, §3 (NEW).]

C. A Maine branch or Maine agency is not required to maintain deposit insurance pursuant to section 422. [1997, c. 182, Pt. B, §3 (NEW).]

D. Any limitation or restriction based on the capital and surplus of a financial institution is deemed to refer, as applied to a Maine branch or Maine agency, to the United States dollar equivalent of the capital and surplus of the foreign bank and, if the foreign bank has more than one branch or agency in the United States, the business transacted by all such branches and agencies must be aggregated in determining compliance with the limitation. [1997, c. 182, Pt. B, §3 (NEW).]

E. Unless otherwise provided by the superintendent, any provision in this Title and rules adopted under this Title that require a financial institution to obtain the approval of its board of directors are deemed to require a Maine branch or Maine agency to obtain the approval of parent foreign bank senior management. [1997, c. 182, Pt. B, §3 (NEW).]

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1315. REPRESENTATIVE OFFICES

**1. Notification required.** A foreign bank may establish a representative office in this State with 30 days' prior notice to the superintendent. A foreign bank may not establish a representative office in this State without the prior approval of the Board of Governors of the Federal Reserve System pursuant to Section 10 of the federal International Banking Act of 1978.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Permitted activities.** Foreign banks may conduct the following activities through representative offices:

A. Solicitation for loans and in connection with those loans the assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action on those applications, solicitation of investors to purchase loans from the foreign bank and the search for investors to contract with the foreign bank for servicing of those loans; [1997, c. 182, Pt. B, §3 (NEW).]

B. The solicitation of new business; [1997, c. 182, Pt. B, §3 (NEW).]

C. The conduct of research; [1997, c. 182, Pt. B, §3 (NEW).]

D. Back office administrative functions; and [1997, c. 182, Pt. B, §3 (NEW).]

E. Any other activity that may be permitted by the superintendent by rule or order. [1997, c. 182, Pt. B, §3 (NEW).]

[ 1997, c. 182, Pt. B, §3 (NEW) .]

### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1316. TRUST ACTIVITIES

**1. Authority.** A foreign bank that has established a Maine branch or Maine agency in accordance with section 1312 may engage in trust activities at that Maine branch or Maine agency upon 30 days' prior notification to the superintendent.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Territorial application.** All trust activities entered into between a foreign bank that has established a Maine branch or Maine agency and persons residing or domiciled in this State or that involve property located in this State are governed by the laws of this State.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1317. SERVICE OF PROCESS

A foreign bank having a Maine agency, Maine branch or Maine representative office shall maintain a registered office and is subject to service of process in the manner provided for in Title 13-C, chapter 15.

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §21 (COR).]

### SECTION HISTORY

1997, c. 182, §B3 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B21 (COR).

## §1318. DEPOSIT REQUIREMENTS; ASSET REQUIREMENTS

**1. Deposit requirement.** Upon the opening of a Maine branch or Maine agency and thereafter, a foreign bank shall keep on deposit, in accordance with rules the superintendent may prescribe, with a financial institution authorized to do business in the State, except for a foreign bank, United States dollar deposits or investment securities of a type that may be prescribed by the superintendent in an amount as set forth in this section. The financial institution must be approved by the superintendent.

[ 1997, c. 182, Pt. B, §3 (NEW) . ]

**2. Amount of deposit.** The aggregate amount of deposited investment securities, calculated on the basis of principal amount or market value, whichever is lower, and United States dollar deposits for each Maine branch or Maine agency established and operating under this chapter may not be less than the amount prescribed by section 412-A or rules adopted under section 412-A as applied to total liabilities of the Maine branch or Maine agency, including acceptances, but excluding accrued expenses, and amounts due and other liabilities to offices, branches, agencies and subsidiaries of the foreign bank. The superintendent may require that the assets deposited pursuant to this subsection must be maintained in such amounts as the superintendent may consider necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest. The superintendent may consider reserves or other assets deposited with or on behalf of a federal banking agency in determining the amount of deposit.

[ 1997, c. 182, Pt. B, §3 (NEW) . ]

**3. Deposit agreement.** The deposit must be maintained with the financial institution selected according to subsection 1 pursuant to a deposit agreement in such form and containing such limitations and conditions as the superintendent may prescribe. So long as it continues business in the ordinary course a foreign bank may be permitted to collect income on the securities and funds so deposited and examine and exchange those securities.

[ 1997, c. 182, Pt. B, §3 (NEW) . ]

**4. Asset maintenance.** Subject to such conditions and requirements as may be prescribed by the superintendent, each foreign bank operating a Maine branch or Maine agency shall hold in this State assets of such types and in such amounts as the superintendent may prescribe by general or specific rule or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and creditors and the public interest. In determining compliance with any such prescribed asset requirements, the superintendent shall give credit to assets required to be maintained pursuant to subsection 1, reserves required to be maintained with the Federal Reserve System and assets pledged and surety bonds payable to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits.

[ 1997, c. 182, Pt. B, §3 (NEW) . ]

### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1319. RECORD KEEPING AND REPORTING

**1. General.** A Maine branch, Maine agency or Maine representative office shall comply with applicable record-keeping and reporting requirements that apply to financial institutions organized under this Title and with any additional requirements that may be prescribed by the superintendent. A Maine branch, Maine agency, Maine representative office and the parent foreign bank shall furnish information relating to the

affairs of the parent foreign bank and its affiliates that the superintendent may from time to time request. The superintendent may modify record-keeping and reporting requirements if the superintendent determines that circumstances warrant a modification.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Reports filed with other agencies.** The reporting requirements imposed by this section may be complied with by submitting to the superintendent copies of reports prepared for federal regulatory agencies by the institution, which contain the information requested, unless the superintendent requires otherwise.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**3. Maintenance of accounts, books and records.** A Maine branch, Maine agency or Maine representative office shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch, agency or representative office. The Maine branch, Maine agency or Maine representative office shall keep a set of accounts and records in English sufficient to permit the superintendent to examine the condition of the branch, agency or representative office and the branch's, agency's or representative office's compliance with applicable laws and rules. The Maine branch, Maine agency or Maine representative office shall promptly provide any additional records requested by the superintendent for examination or supervisory purposes.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**4. More than one Maine branch or Maine agency.** A foreign bank with more than one Maine branch or Maine agency shall designate one of those branches or agencies to maintain consolidated asset, liability and capital equivalency accounts for all Maine branches or Maine agencies.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1320. DISCLOSURE OF LACK OF DEPOSIT INSURANCE

Each foreign bank operating a Maine branch or Maine agency shall, in a manner established by the superintendent, give notice that deposits and credit balances in that branch or agency are not insured by the Federal Deposit Insurance Corporation. [1997, c. 182, Pt. B, §3 (NEW).]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1321. NOTICE OF CHANGES IN NAME AND LOCATION

**1. Notice.** A foreign bank maintaining a Maine branch, Maine agency or Maine representative office shall provide the superintendent with prior notice of the following events:

A. A change in corporate name; [1997, c. 182, Pt. B, §3 (NEW).]

B. A change of mailing address; [1997, c. 182, Pt. B, §3 (NEW).]

C. A relocation of office in Maine; [1997, c. 182, Pt. B, §3 (NEW).]

D. A conversion of a Maine branch or Maine agency to a federal branch or agency; and [1997, c. 182, Pt. B, §3 (NEW).]

E. Any changes in the designation of home state. [1997, c. 182, Pt. B, §3 (NEW).]

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Timing and form of notice.** The superintendent shall determine the form and timing of notice of these events.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1322. CHANGE OF CONTROL OF FOREIGN BANK

A foreign bank that is licensed to establish and maintain a Maine branch, Maine agency or Maine representative office shall file with the superintendent a notice, in such form and containing such information as the superintendent may prescribe, no later than 14 calendar days after that foreign bank becomes aware of any acquisition of control of that foreign bank or merges with another foreign bank. [1997, c. 182, Pt. B, §3 (NEW).]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1323. VOLUNTARY CLOSURE OF MAINE BRANCH, MAINE AGENCY OR MAINE REPRESENTATIVE OFFICE

**1. Maine branch or Maine agency.** A foreign bank may voluntarily close a Maine branch or Maine agency in accordance with section 335, subsection 2.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Maine representative office.** A foreign bank may voluntarily close a Maine representative office upon 30 days' prior notice to the superintendent.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1324. CONVERSIONS

**1. Authority.** A foreign bank may convert a Maine representative office to a Maine agency or Maine branch, or convert a Maine agency to a Maine representative office or a Maine branch, or convert a Maine branch to a Maine agency or Maine representative office with the prior approval of the superintendent. A foreign bank may also convert a federal branch or agency to a Maine branch or Maine agency.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Applications.** Applications for prior approval of conversions must be processed in accordance with sections 252 and 253 or section 1315 as appropriate.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1325. ASSESSMENT, EXAMINATION AND ENFORCEMENT

**1. Assessment.** A foreign bank operating a Maine branch or a Maine agency shall pay assessments to the superintendent in accordance with section 214, subsection 2.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Examination.** The superintendent may examine each Maine branch, Maine agency or Maine representative office pursuant to section 221 and is compensated for those examinations according to the provisions of section 214, subsection 1.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**3. Enforcement.** The superintendent may enforce the provisions of this chapter pursuant to the enforcement authority under sections 231 and 232.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

### SECTION HISTORY

1997, c. 182, §B3 (NEW).

## §1326. INVOLUNTARY TERMINATION OF AUTHORITY AND RECEIVERSHIP

**1. Involuntary termination of authority to operate Maine branch, Maine agency or Maine representative office.** The involuntary termination of authority to operate a Maine branch, Maine agency or Maine representative office is governed by the following.

A. Authority to operate a Maine branch, Maine agency or Maine representative office terminates when the parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. [1997, c. 182, Pt. B, §3 (NEW).]

B. The superintendent may terminate a foreign bank's authority to operate a Maine branch, Maine agency or Maine representative office if the superintendent determines that or has reasonable cause to believe that:

(1) The foreign bank has violated or failed to comply with any of the provisions of this chapter or any of the rules or orders of the superintendent made pursuant to this chapter; or

(2) A conservator is appointed for the foreign bank or a similar proceeding is initiated in the foreign bank's country of organization. [1997, c. 182, Pt. B, §3 (NEW).]

C. A foreign bank whose authority to operate a Maine branch, Maine agency or Maine representative office is revoked by the superintendent may bring an action challenging the superintendent's revocation in Superior Court within 10 days of that revocation. The court must uphold the superintendent's revocation of a foreign bank's authority to operate a Maine branch, Maine agency or Maine representative office unless the court finds that the superintendent's action was arbitrary and capricious. [1997, c. 182, Pt. B, §3 (NEW).]

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Receivership.** Whenever the superintendent revokes a foreign bank's authority to operate a Maine branch or Maine agency or whenever any creditor of that foreign bank has obtained a judgment against the foreign bank arising out of a transaction with a branch or agency in any court of record of the United States or any state of the United States and made application, accompanied by a certificate from the clerk of the court stating that that judgment has been rendered and has remained unpaid for a period of 30 days, or whenever



the superintendent becomes satisfied that that foreign bank is insolvent, the superintendent may, after due consideration of its affairs, appoint a receiver who shall take possession of all the property and assets of that foreign bank in Maine pursuant to provisions of chapter 36.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

### §1327. INTERSTATE OPERATIONS OF MAINE FOREIGN BANKS

**1. Establishment.** A Maine foreign bank may establish and operate a branch in another state in accordance with section 1312. The establishment of that branch may be de novo or through merger, acquisition or other consolidation.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Activities.** A Maine foreign bank may conduct any activity at that branch that is permissible for a foreign bank in that host state, as defined in section 131, subsection 20-B.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

### §1328. INTERSTATE OPERATIONS OF OUT-OF-STATE FOREIGN BANKS

**1. Establishment.** An out-of-state foreign bank may establish a branch or agency in this State in accordance with the procedures set forth in section 373, subsection 3. The establishment of that branch or agency may be de novo or through merger, acquisition or other consolidation.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

**2. Activities.** The activities of branches or agencies located in this State by out-of-state foreign banks are governed by the provisions of this chapter and section 376, subsection 2.

[ 1997, c. 182, Pt. B, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

### §1329. RULE-MAKING AUTHORITY

The superintendent may adopt rules to supplement the requirements of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 182, Pt. B, §3 (NEW).]

#### SECTION HISTORY

1997, c. 182, §B3 (NEW).

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